IN THE

Supreme Court of the United States

OCTOBER TERM, 1944.

No. 200.

ORDER OF RAILWAY CONDUCTORS OF AMERICA, et al.,
Petitioners,

v.

THE PENNSYLVANIA RAILROAD COMPANY AND BROTHERHOOD OF RAILROAD TRAINMEN,
Respondents.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA.

BRIEF FOR RESPONDENT, THE PENNSYLVANIA RAILROAD COMPANY.

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BRIEF FOR RESPONDENT, THE PENNSYLVANIA RAILROAD COMPANY.

OPINION BELOW.

The opinion of the Court of Appeals for the District of Columbia is reported in 141 F. (2d) 306.

JURISDICTION.

The petitioners invoke the jurisdiction of this Court under Section 240(a) of the Judicial Code, as amended by the Act of February 13, 1925 (28 U. S. C., Sec. 347(a)).

STATUTE INVOLVED.

The statute here involved is the Railway Labor Act, as amended by the Act of June 21, 1934 (45 U. S. C., Sec. 151, *et seq.*). Section 2, first, second, third, fourth, ninth and tenth, the paragraphs specially involved, are set forth in the Appendix to this brief at pp. 1a-4a thereof.

STATEMENT.

This case grows out of a dispute between two railroad unions concerning their so-called jurisdictional bargaining rights. The two unions are the Order of Railway Conductors, petitioners in this case (hereinafter sometimes referred to as the Conductors), and the Brotherhood of Railroad Trainmen, one of the respondents (hereinafter referred to as the Trainmen).

Bargaining Negotiations and Jurisdictional Dispute.

The dispute arose in the course of bargaining negotiations with respect to proposed changes in an agreement, or Schedule of Regulations, which had been agreed upon jointly in 1927 by the Conductors, as the then duly accredited representative and bargaining agent for the class and craft of road conductors, the Trainmen, as the then duly accredited representative and bargaining agent for the class and craft of yard conductors and road and yard brakemen, and The Pennsylvania Railroad Company (R. 5). These bargaining negotiations began in 1941 and

continued up to July 24, 1942, through a series of joint conferences, in which representatives of the Conductors, the Trainmen and the Railroad participated (R. 6). During the course of these negotiations, certain differences developed between the representatives of the Conductors and the representatives of the Trainmen with respect to the provisions which should be adopted to govern the movement of employes into and out of the brakeman class, and with respect to the rules and rates of pay for employes used to assist in the collection of fares on passenger trains and designated as "assistant conductors or ticket collectors" (R. 6-7, 24-25). Both the Conductors and the Trainmen claimed jurisdiction with respect to these matters, the Conductors' organization contending that as representative of the class of road conductors it had the exclusive right to determine the provisions governing these matters and the Trainmen's organization insisting that it had a right to participate in such determinations because the brakemen and baggagemen whom it represented were involved (R. 6-7, 14-15).

Withdrawal of the Conductors.

As a result of these differences between the Conductors and the Trainmen, the Conductors' organization finally withdrew from the joint negotiations, giving written notice to the Trainmen and to the Railroad of its withdrawal on August 3, 1942 (R. 6-7, 21-23). Faced by this refusal on the part of the Conductors to participate further in the joint negotiations, the Trainmen and the Railroad continued the negotiations until they ultimately reached an agreement on or about August 17, 1942, upon new provisions governing the rules, rates of pay and working conditions applicable to the class and craft of employes represented by the Trainmen (R. 7). This new agreement included certain provisions with respect to the designation and duties of assistant conductors or ticket collectors, and also certain provisions with respect to the

movement of employes into and out of the brakeman class (R. 7-11).

Beginning shortly thereafter, on August 27, 1942, representatives of the Conductors and the Railroad engaged in separate negotiations with each other in an endeavor to reach an agreement, but no agreement was reached (R. 16). The failure of the Conductors to reach an agreement with the Railroad resulted from the fact that the Conductors continued to insist that the Railroad agree with them to certain stipulations in conflict with those already incorporated in the agreement with the Trainmen (R. 30). Since the Railroad could not accede to this demand of the Conductors which would have bound the Railroad by two inconsistent agreements, the negotiations with the Conductors ended in a deadlock.

Representation Dispute.

On September 23, 1942, the Trainmen invoked the services of the National Mediation Board for the purpose of determining whether the Trainmen should be certified as the duly accredited representative of the class and craft of road conductors, in place of the Conductors (R. 17). The Conductors protested to the Board against the holding of an election as requested by the Trainmen, stating, among other things, that the position of the Conductors (*i. e.*, the union) had been "prejudiced" by the conclusion of an agreement between the Trainmen and the Railroad and by the information which the employes generally had received to the effect that such an agreement had been concluded, and that therefore an election held at that time would not only interfere with the negotiations then pending between the Conductors and the Railroad but would not be an election held "without interference, influence and coercion exercised by the Carrier" (R. 30). The Board rejected the Conductors' protest, without rendering any formal opinion or decision, but it indicated informally, in a letter to the President

of the Conductors, that the charges of carrier coercion and interference were matters with which the Board was not concerned, since its power and duty with respect to such charges related only to insuring that elections are conducted in such a manner as to enable the employes to make known their choice of a representative without carrier interference, influence or coercion. The Board further pointed out in this letter that "the Railway Labor Act prescribes an exclusive procedure for the protection of employes in the choice of representatives. The provisions of Section 3 as quoted above may be made effective through the application of Section 10 of the Act" (R. 38-39).* The Board concluded by saying that it did not find in the Railway Labor Act any provisions under which the protest could be legally granted, and therefore it would continue with its investigation preparatory to the holding of an election in the manner required by the Act (R. 40).

The Complaint.

Shortly thereafter, on November 27, 1942, the Conductors filed the complaint in the present suit, naming the Trainmen and the Railroad as defendants, and charging that the jurisdictional rights of the Conductors, as representative of the class of road conductors, had been infringed by the negotiations between the Trainmen and the Railroad, from which the Conductors had withdrawn, and by the agreement subsequently entered into between the Trainmen and the Railroad, and also charging that the Trainmen and the Railroad had agreed upon a plan of action designed to discredit the Conductors and strengthen the Trainmen and thereby to influence, coerce and interfere with the class and craft of road conductors in their

* The Board in the language quoted was obviously referring to Section 2, Third, and Section 2, Tenth, of the Railway Labor Act. The passage from the Act which it had quoted immediately preceding this comment, and which it described in the comment as being the "provisions of Section 3 as quoted above," is a passage from Section 2, Third, of the Act:

choice of a collective bargaining representative (R. 2-17). The specific acts alleged in the complaint as constituting coercion, influence and interference on the part of the Railroad consisted only of (1) the making and publication by the Trainmen and the Railroad of the agreement referred to above, which was alleged by the Conductors to have infringed their jurisdictional rights and violated the existing agreement between the Conductors and the Railroad (R. 14-15); (2) the completion and publication by the Trainmen and the Railroad of a separate agreement effecting a settlement of existing claims made by the Trainmen against the Railroad and on file with the National Railroad Adjustment Board (R. 15); (3) the alleged refusal of the Railroad to bargain and agree with the Conductors with respect to the matters in dispute between the Trainmen and the Conductors, and specifically its alleged failure to meet with the Conductors until about three weeks after the Conductors' withdrawal from the joint negotiations (R. 15-16); (4) the alleged making of certain statements by representatives of the Railroad to representatives of the Conductors in their bargaining conferences (R. 16). It will be observed that these allegedly coercive acts took place in the course of dealings among the two unions and the Railroad, and that the only impact, if any, which is claimed to have been transmitted to the employes themselves consisted of the publication of the two agreements between the Trainmen and the Railroad.

In the complaint as thus originally filed, the Conductors, although aware of the fact that the Mediation Board was about to hold an election, did not name the Mediation Board as a party or seek in any way to prevent it from holding the election.

The Election.

On December 2, 1942, the Board ordered an election to determine the bargaining representative for the class or craft of road conductors, and ballots were taken from

December 5 to December 19. On December 27, 1942, the Board issued a certification that as a result of such election the Trainmen had been duly designated and authorized to represent the class or craft of road conductors on the Pennsylvania Railroad (R. 19, 75-76). Representatives appointed by the two rival unions for the purpose of observing the election certified that the election was "conducted in a fair and impartial manner, and that the secrecy of the ballots was kept inviolate" (R. 87).

The Amended Complaint.

Thereafter, the Conductors amended their complaint in the instant case so as to include the Mediation Board as a party defendant. As thus amended, the complaint asked, (1) that the certification issued by the Board be annulled, (2) that the Board be enjoined from holding an election until it had investigated and held a hearing on the Conductors' charges of interference and coercion, (3) that certain portions of the agreement between the Trainmen and the Railroad be declared invalid under the Railway Labor Act, as infringing the jurisdictional rights of the Conductors, (4) that the Conductors be declared the proper bargaining agent to represent the class and craft of road conductors, and the Railroad be required to negotiate with the Conductors and be enjoined from negotiating or making an agreement with the Trainmen with regard to the work of said class or craft, (5) that the Railroad be enjoined from coercing, influencing or interfering with the class or craft of road conductors in their choice of a representative (R. 20-22).

Disposition in the Courts Below.

Upon a motion for summary judgment filed by the Conductors, asking to have the election and the Board's certification annulled and to have the Board enjoined from holding an election until it had investigated and considered

the Conductors' charges (R. 65-66), the District Court dismissed the complaint, on the ground that the facts alleged therein "do not establish that the plaintiffs have any cause of action" (R. 89).

While the appeal of the Conductors to the Court of Appeals for the District of Columbia was pending, this Court handed down its decisions in *Switchmen's Union* v. *National Mediation Board*, 320 U. S. 297 (1943), *General Committee* v. *M.-K.-T. R. Co.*, 320 U. S. 323 (1943), and *General Committee* v. *Sou. Pac. Co.*, 320 U. S. 338 (1943). On the basis of those decisions, the Mediation Board, the Trainmen, and the Railroad each filed in the Court of Appeals a motion to dismiss the Conductors' appeal, for lack of jurisdiction of the Court to consider the issues presented by the complaint (R. 92-108). These motions were granted by the Court of Appeals on the grounds, first, that the certification of the Board was final and unreviewable on the authority of the *Switchmen's Union* decision, second, that the federal courts do not have jurisdiction of the issues involved in the light of the *M.-K.-T.* and *Southern Pacific* decisions, and third, that even if it be conceded that the District Court had jurisdiction to grant the relief asked, the cause of action against the Railroad seeking an injunction against coercion and influence had become moot because the controversy out of which that cause of action arose, and the right of the Conductors to represent any class of employes in connection with that controversy, had been terminated by the Board's certification of the Trainmen as the authorized bargaining representative of the class of employes in question, and also because there was no allegation that any acts of coercion or influence on the part of the Railroad were continuing (R. 113-116). Petitioners filed their petition for certiorari in this Court, naming the Trainmen and the Railroad as respondents but omitting the Mediation Board as a respondent. The Mediation Board is therefore not before this Court (R. 125).

The Mediation Board's Position.

It is plain from the position taken by the Mediation Board throughout this case that it did not regard the acts complained of as having in fact interfered with or prevented the free and uncoerced exercise by the employes of their right to choose a bargaining representative.

Thus in its original answer to the complaint, the Mediation Board specifically averred that, following the Trainmen's invocation of its services, it had investigated the dispute and held an election and had taken a secret ballot of the employes and utilized "appropriate methods of ascertaining the names of the duly designated and authorized representatives of said employees *in such manner as insured the choice of representatives by the said employees without interference, influence, or coercion exercised by the carrier*" (R. 61) (Emphasis supplied). Subsequently, the Board filed an amended answer in which, referring to the Conductors' charges, it expressly denied "that the practices complained of constitute in fact unlawful coercion" (R. 74).

Its position in this respect was made entirely clear in its brief in the Court of Appeals below, a copy of which is lodged with the Clerk of this Court; and the relevant portions of which are reprinted in the Appendix to this brief. In that brief (p. 9) the Board, in contending that the motion for summary judgment was properly denied, said (see Appendix, pp. 5a-6a):

> "The only requirement as to designation of representative contained in the Act is that in Section 2, third, which states that representatives shall be designated without carrier coercion. *The charges of carrier coercion made to the Board here did not, even if true, reasonably relate to the designation of representatives*, and therefore the Board was not required to investigate their truth. * * *
>
> The court also properly dismissed the complaint because *the facts stated therein, which were treated*

by the court as true, did not allege unlawful coercion within the meaning of Section 2, third. These facts were the same as those alleged in the complaint to the Board and therefore likewise *did not relate to coercion in connection with the designation of representatives, the only kind of coercion forbidden by that section.* The allegations, furthermore, do not charge coercion within the meaning placed upon that term in this connection by the Supreme Court, since *the conduct described was obviously not such as to override the will of an employee desiring to vote for O.R.C. and cause him to vote for B.B.T.*" (Emphasis supplied.)

Petitioners have not seen fit to name the Board as a respondent in this Court—perhaps because they did not want the Court to hear what the Board had to say—and therefore there is no opportunity for the Board itself to inform this Court as to its position. If there were such opportunity, there can be no doubt, in view of the above, as to what it would say regarding its position.

QUESTIONS PRESENTED.

1. Under this Court's decision in the *Switchmen's Union* case, holding that Congress intended determinations by the National Mediation Board under the Railway Labor Act to be final and unreviewable, do the courts have power to nullify a Board certification in a case where, as in the *Switchmen's Union* case, the alleged error on the part of the Board consisted of an asserted misconstruction of its duties under the Act?

2. Independently of the *Switchmen's Union* decision, may a private suit like the present one, for judicial enforcement of the statutory right of employes to freedom

from coercion in their choice of a representative, be maintained in the face of the Congressional intent manifested in the statute that judicial enforcement of that right should be limited to the method specifically prescribed therefor in the statute, viz., by suits brought by United States attorneys under the direction of the Department of Justice?

3. Under the decisions of this Court in the *M.-K.-T.* and *Southern Pacific* cases, to the effect that jurisdictional disputes between labor organizations do not present justiciable issues under the Railway Labor Act, do the courts have the power to resolve an inter-union jurisdictional dispute, such as that here involved, merely because the disgruntled union in its complaint attaches the label of carrier coercion to some of the acts occurring in the course and as part of that dispute?

4. Independently of the *Switchmen's Union*, *M.-K.-T.* and *Southern Pacific* decisions, may the courts act, at the request of a railroad labor union, to set aside a Mediation Board certification and enforce alleged rights of employes whom, under the Board's certification, the union no longer represents, in a proceeding to which the Board is not a party?

SUMMARY OF ARGUMENT.

This is a case of a jurisdictional dispute between two rival railroad labor unions, which came to a head in the course of three-party bargaining negotiations among the unions and the Railroad. The position of the railroad in the dispute was and remains that of a "stakeholder," since it was as a practical matter obliged to come to an agreement with one or the other of the two unions, but was not able to agree with both, because of their conflicting demands.

The dispute resulted in (*a*) the withdrawal of one of the unions—the Conductors' organization—from the joint bargaining conferences, (*b*) an agreement between the other union—the Trainmen's organization—and the Railroad, and (*c*) an election held by the Mediation Board, pursuant to the request of the Trainmen, to determine the accredited representative of the class of employes previously represented by the Conductors. That election culminated in a certification by the Board that the Trainmen's organization constituted the accredited representative of that class of employes. As a result of such certification, the Conductors no longer represent any employes on the Railroad, and in this way by the action of the Board, the jurisdictional dispute has been resolved.

The Conductors' organization, naturally disappointed by its failure in the bargaining negotiations, presses this lawsuit against the Trainmen and the Railroad for the apparent purpose of recouping what it has lost through its bargaining failure and of ousting the Trainmen's organization from its position of accredited bargaining agent as certified by the Mediation Board. The suit has been dismissed in the courts below, and the petitioners here, although seeking an annulment of the Board's certification, have chosen not to name the Board, which was a party below, as a respondent in this Court.

This case is controlled by the decision of this Court in *Switchmen's Union v. National Mediation Board*, 320 U. S. 297 (1943). The Court there concluded that a certification such as that made by the Board in the present case, designating the accredited representative of a class or craft of employes, is final and not reviewable in the courts. That conclusion was based upon a consideration of the history of Congress' handling of the "explosive" problems in the field of railroad labor relations, upon the statutory mandate embodied in Section 2, Ninth, of the Railway Labor Act, requiring a carrier to "treat with" a representative

certified by the Board, and upon the complete absence in that Act of any provision for judicial review or annulment of a Board certification.

The factors which thus led this Court, in the *Switchmen's Union* case, to attribute complete finality to a Board certification are likewise present here, and apply with equal force to the certification issued by the Board in the instant case, designating the Trainmen as the accredited representative of road conductors on the railroad. The fact that the *Switchmen's Union* case involved the right of a majority of a craft or class of employes to choose their own representative, under Section 2, Fourth, of the Act, while petitioners in the present case have invoked the right of employes to be free from coercion in their choice of a representative, under Section 2, Third, does not differentiate this case from the *Switchmen's Union* case.

Petitioners assert that the *Switchmen's Union* decision does not apply because the Board allegedly failed to give consideration to the charge of coercion. The fact is that all the charges made in this suit, alleging carrier coercion in the employes' choice of their representative, were presented to the Board before it held the election. The Board, by its action in holding the election and issuing the certification notwithstanding the charges made by the Conductors, and by its various statements, has made it plain that it was not impressed with the charges and did not believe the acts charged would prevent the free exercise by the employes of their choice of a representative.

In any event, whether or not the Board passed on the Conductors' charges, there cannot be, under the Railway Labor Act as construed in the *Switchmen's Union* case, any judicial review of a Board certification, and, after the Board has acted, its determination must be re-

garded as final, so long as the *Switchmen's Union* decision stands.

However, even if the Switchmen's Union decision had not been made, the judgment of the Court of Appeals in this case would have to be affirmed. There are three reasons why that is so. The first reason lies in the provisions of Section 2, Tenth, of the Act. Those provisions prescribe a method for judicial enforcement of certain specified rights, including the right of employes to be free from coercion in their choice of a representative. The method thus prescribed consists of the bringing of a proceeding, of whatever type may be necessary to enforce the right in question, by a United States attorney under the direction of the Attorney General. Those provisions, read in the light of their legislative history and of the practical considerations lying behind them, manifest a clear Congressional intent that the method of judicial enforcement there provided shall be exclusive of other methods of judicial enforcement, and that private persons should not be permitted to take enforcement into their own hands by means of suits like the present one.

The second reason why petitioners' suit would have to fail even if the *Switchmen's Union* decision had not been made lies in the separate and independent decisions made by this Court in the cases of *General Committee* v. *M.-K.-T. R. Co.*, 320 U. S. 323 (1943), and *General Committee* v. *Sou. Pac. Co.*, 320 U. S. 338 (1943). In its decisions in those two cases, this Court held that jurisdictional disputes between rival labor unions, such as that involved in the present case, do not present justiciable issues under the Railway Labor Act, and therefore the courts may not be called upon to resolve such disputes. It is clear, from a consideration of the acts complained of by petitioners in this case, that the acts in question, even though claimed by petitioners to have "influenced" or tended to persuade

the employes with respect to their choice of a bargaining representative, did in fact constitute integral phases of the dispute between the two rival unions over their respective bargaining jurisdictions, and the issues presented thereby are therefore non-justiciable, under the *M.-K.-T.* and *Southern Pacific* decisions.

The final reason why petitioners' suit would necessarily fail even if the *Switchmen's Union* decision had not been made—and this reason would also apply even if the decisions in the *M.-K.-T.* and *Southern Pacific* cases had not been made—proceeds from the fact that petitioners have chosen not to name the Mediation Board as a respondent in this Court. As a result of this failure on the part of petitioners to appeal from the Court of Appeals' dismissal of the suit with respect to the Board, that dismissal has become final and unreversible, since the statutory period for such an appeal has now expired.

It follows that there is no way of compelling the Board to change or withdraw its certification in this proceeding, and the certification therefore stands as final and immune to judicial action by this or any other court in the present case. With that certification standing, the Trainmen's organization has exclusive status as statutory representative of the class of employes in question. Any bargaining or agreement with respect to those employes must now, under the mandate of the Act, be with the Trainmen and not with the Conductors. Since petitioners no longer have any standing to represent the employes in question, or any employes on the Railroad, and since the Board's certification which has brought about that result is now unassailable, neither this Court nor any other court can grant petitioners the relief which they seek in this case. The entire controversy has thus become moot.

For all of the above reasons, the judgment of the Court of Appeals below should be affirmed.

ARGUMENT.

I. A Suit of the Character of the Present One, Which Seeks Through Private Judicial Action to Nullify a Certification Made by the Mediation Board Under the Railway Labor Act, Must be Held to Lie Outside the Jurisdiction of the Federal Courts, in View of the Decision of This Court in the Switchmen's Union Case and in View of the Manifest Congressional Intent to Exclude Methods of Review or Enforcement Not Specifically Provided in the Act.

A. Under the Switchmen's Union Decision, a Determination by the National Mediation Board, under Section 2, Ninth, of the Accredited Bargaining Representative of a Class or Craft of Employes, is Final, and Therefore an Attempt, Such as That Here Made by Petitioners, to Have the Courts Annul Such a Determination, Must Fail.

1. The Decision in the Switchmen's Union Case Was to the Effect That a Board Certification is Final.

The motions to dismiss the appeal, which were granted in the Court of Appeals below, were based primarily on the decision of this Court in the case of *Switchmen's Union* v. *National Mediation Board*, 320 U. S. 297 (1943). In that case, the facts were that the Board held an election among all the yardmen on the New York Central System in order to determine their choice of a representative, and certified the Trainmen as the duly authorized bargaining agent of all yardmen. The Switchmen's organization had contended that the yardmen on certain designated parts of the System should have been permitted to vote separately for a representative. The Board had concluded that the Railway Labor Act vested it with "no discretion to split a single carrier or combine two or more carriers for the purpose of determining who shall be eligible to vote for a representative of a craft or class of employees under

Section 2, Ninth, of the Act" (320 U. S. at p. 309). Accordingly, the Board had permitted all yardmen on the System to vote, with the result stated above. In its suit for cancellation of the Board's certification, the Switchmen took the position that the action of the Board in voting all yardmen on the System as a craft or class unit had in effect denied to the employes whom the Switchmen represented the right provided for in Section 2, Fourth, of the Act, viz., that "The majority of any craft or class of employees shall have the right to determine who shall be the representative of the craft or class for the purposes of this Act."

Upon a review of the applicable provisions of the Railway Labor Act, and particularly of the history of legislation in the field of railroad labor relations, which the Court apparently regarded as having special significance, this Court concluded that the action of the Board in holding an election and issuing a certification was final and not subject to judicial review. That conclusion was based upon several considerations. In the first place, there was found, in the history of legislation dealing with labor relations in the railroad industry, an indication that in the present Act "Congress intended to go no further in its use of the processes of adjudication and litigation than the express provisions of the Act indicate" (320 U. S. at p. 302).

In the second place, it was found that Congress had delegated to the Board the task of protecting the "right" of employes embodied in Section 2, Fourth, of the Act, and that, in view of the special legislative history of the Act and the detailed provisions which it contains with respect to the Mediation Board's functioning, the elaborate Congressional specification of one method, viz., action by the Board, for the protection of that right should be taken as indicating a Congressional intent to exclude other methods not thus specifically provided, such as the judicial review there sought. Thus, after discussing the statutory

provisions made for the Board's determination of the bargaining representative of a craft or class, this Court said (p. 303 of 320 U. S.):

> "Where Congress took such great pains to protect the Mediation Board in its handling of an explosive problem, we cannot help but believe that *if Congress had desired to implicate the federal judiciary and to place on the federal courts the burden of having the final say on any aspect of the problem, it would have made its desire plain.*" (Emphasis supplied.)

In the third place, this Court regarded the provisions of Section 2, Ninth, of the Act, requiring the carrier to comply with the Board's certification and treat with the representative so certified, as also indicating that Congress intended such a certification to be final and conclusive. After referring to this statutory mandate in Section 2, Ninth, and drawing an analogy to the decision of Mr. Justice Brandeis in *Butte, A. & P. Ry. Co.* v. *United States*, 290 U. S. 127 (1933), to the effect that certain determinations by the Interstate Commerce Commission were final and conclusive because "essential to the performance" of the Commission's statutory duty and because Congress had not provided for judicial review, Mr. Justice Douglas in the *Switchmen's Union* case went on to say (p. 305 of 320 U. S.):

> "In the present case the authority of the Mediation Board in election disputes to interpret the meaning of 'craft' as used in the statute is no less clear and no less essential to the performance of its duty. The statutory command that the decision of the Board shall be obeyed is no less explicit. Under this Act Congress did not give the Board discretion to take or withhold action, to grant or deny relief. It gave it no enforcement functions. It was to find the fact and then cease. Congress prescribed the command. *Like the command in the Butte Ry. case*

it contained no exception. Here as in that case the intent seems plain—the dispute was to reach its last terminal point when the administrative finding was made. There was to be no dragging out of the controversy into other tribunals of law." (Emphasis supplied.)

Mr. Justice Douglas went on to point out that the Railway Labor Act contained no general provision for judicial review, and made specific provision for judicial review in certain circumstances but made no such provision with respect to determinations by the Mediation Board under Section 2, Ninth.

On the basis of all these considerations, it was concluded that the Congressional intent was clear that determinations by the Mediation Board under Section 2, Ninth, must be regarded as final and not subject to judicial review.

2. *The Present Case is Controlled by the Decision in the Switchmen's Union Case.*

To demonstrate that the present case is controlled by this Court's decision in the *Switchmen's Union* case, it is only necessary briefly to review the facts of this case. As already indicated, the Mediation Board has conducted an election and has certified the Trainmen as the duly accredited bargaining representative of the class or craft of road conductors on the Pennsylvania Railroad, thereby displacing the Conductors as the representative of that class. The Conductors objected to the holding of this election, on the ground of an alleged conspiracy between the Railroad and the Trainmen to coerce and interfere with the employes in their choice of a representative. The course of conduct alleged by the Conductors as constituting coercion and interference was considered by the Mediation Board, which determined that that conduct,

even if it did amount to unlawful coercion and interference—which the Board apparently believed it did not—nevertheless had no bearing or effect on the election and did not prevent the free and uncoerced exercise by the employes of their choice of a representative (pp. 9-10 above, and pp. 5a-12a of the Appendix hereto). The Board indicated that it had no jurisdiction of and therefore was not concerned with alleged acts of coercion and interference which had no bearing on the employes' choice of a representative and did not prevent the free exercise of that choice (R. 38-39). Accordingly, the Board proceeded with the election, and made the certification despite the Conductors' protest. The petitioners in this case are now asking the Court to take action which will have the effect of nullifying the Board's determination.

Thus, the petitioners here allege a violation of the "right" of employes set forth in Section 2, Third, of the Act to designate their representatives without interference, influence, or coercion on the part of the carrier. That "right," like the right involved in the *Switchmen's Union* case, is protected by Section 2, Ninth, wherein it is provided that:

> "In such an investigation, the Mediation Board shall be authorized to take a secret ballot of the employees involved, or to utilize any other appropriate method of ascertaining the names of their duly designated and authorized representatives in such manner as shall *insure the choice of representatives by the employees without interference, influence, or coercion exercised by the carrier.*" (Emphasis supplied.)

Here, as in the *Switchmen's Union* case, the Board has proceeded to act under Section 2, Ninth, and, after taking such steps as it deemed necessary and appropriate to insure the free and uncoerced choice of a representative by the employes in question, has certified the repre-

sentative so chosen. Here, as in the *Switchmen's Union* case, the statutory mandate of Section 2, Ninth, requiring the carrier to give effect to the Board's certification and to treat with the representative so certified, is clear and compelling.

If the decision of this Court in the *Switchmen's Union* case stands, and the law continues to be what it has there been declared to be—viz., that Congress intended a certification by the Board of a collective bargaining representative to be a final and unreviewable determination of a representation dispute, so that "the dispute was to reach its last terminal point when the administrative finding was made," and "there was to be no dragging out of the controversy into other tribunals of law"—if that decision stands, then the certification by the Board in this case of the Trainmen as the duly accredited bargaining representative of the class or craft of road conductors on the Pennsylvania Railroad must be regarded as final and conclusive, and any attack in court on that certification, either directly or indirectly, or any atempt in a judicial proceeding to nullify the certification or to achieve a result which would have that effect, must be rejected. The present suit is such an attack. It is an attempt by the petitioners, by means of a judicial proceeding, to have the Board's certification nullified and set aside. This is plain beyond a doubt, from the petitioners' brief in this Court. For example, they say (page 30 of petitioners' brief):

> "It appearing that the *annulment of the election and certification of BRT as the conductors' representative is the only relief* that will effectively vindicate the conductors' right to a free choice, it is clear that the district court has the power to *annul that election and certification.*" (Emphasis supplied.)

It follows that the present suit, being an attempt to set aside the Board's certification, must, under the *Switchmen's Union* decision, fail, and the judgment below must for that reason alone, be affirmed.

3. The Principle of the Switchmen's Union Decision Applies with Even Greater Force in the Present Case Since the Mediation Board is not Present to Defend Against the Conductors' Attempt to Have Its Certification Set Aside.

Thus, under the *Switchmen's Union* decision the Board's certification in this case must be regarded as final, and not subject to being judicially reviewed or nullified; either directly or in any indirect manner such as that attempted by petitioners in this case. Here, the rule of administrative finality of a Board certification applies with even greater force than it did in the *Switchmen's Union* case. The Board is no longer a party to the present proceeding. If the federal courts do not have the power to set aside a certification of the Board in a proceeding to which the Board is a party, it follows *a fortiori* that the certification cannot be nullified where the Board is no longer present to defend its action.

Petitioners, by their position at this stage of the case, show themselves to be in an inextricable dilemma, made inevitable by the *Switchmen's Union* case. By virtue of that decision, they are forced to admit that they cannot obtain relief against the Board. Therefore, they do not name the Board as a respondent to their petition. On the other hand, they cannot obtain the relief which they seek unless they succeed in having the Board's certification set aside, and their petition makes it plain that that is their objective (Petition, 10). But any proceeding the purpose of which is to set aside an administrative determination such as that of the Board in this case must certainly include the administrative body as a party so that that body may defend its determination. This would necessarily follow from the fact that the order of the administrative body would remain in effect despite a contrary decree from this Court. In *North Dakota v. Chicago & N. W. Ry. Co.*, 257 U. S. 485 (1922), this Court

refused to create that dilemma. Speaking through Mr. Justice Holmes, it said:

> "Complete justice requires that the railroads should not be subjected to the risk of two irreconcilable commands—that of the Interstate Commerce Commission enforced by a decree on the one side and that of this court on the other. The decision in this case although an authority would not be res judicata, and the Commission would not be concluded from rearguing the whole matter. * * *
>
> "For the reasons that we have indicated it is equitable that a decree should not be entered except in such form as to bind the Interstate Commerce Commission and the United States and therefore this bill must be dismissed" (pp. 496-1 of 257 U. S.).*

With the Board no longer a party, petitioners must fail in their admitted attempt to have the Board's certification set aside. And if the Board were made a party, their petition would appear even more obviously to be what it in fact is, namely, an attempt to obtain judicial review of the Board's determination, which is precluded by the decision of this Court in the *Switchmen's Union* case.

It is clear that the petitioners' ultimate contention in this case is that the federal courts can and should accomplish indirectly something which this Court has held they have not the power to accomplish directly. The fundamental inconsistency in the petitioners' position is that they recognize the full sweep of the *Switchmen's Union* case in insulating the Board's certification from judicial review under all circumstances, but at the same time they attempt to carve out of the principle announced in that case the large field of representation disputes in connection with which the employes who are dissatisfied

* See also, *Wells* v. *Roper*, 246 U. S. 335, 337 (1918); *Bordieu* v. *Pacific Oil Co.*, 299 U. S. 65, 70-71 (1936); and *Weber* v. *Harwood*, 128 F. 2d. 846 (C. C. A. 9th, 1942).

with the result may claim that their right to be free from coercion and influence has been violated by the carrier. If any such exception can be read into the decision of this Court in the *Switchmen's Union* case, it becomes apparent that few representation disputes will in reality be settled by a certification of the Board.

B. Independently of the Switchmen's Union Decision, the Present Suit Must Fail Because it is Not Brought under the Provisions of Section 2, Tenth, and Those Provisions Manifest a Congressional Intent to Provide Thereby an Exclusive Method of Judicial Enforcement of Certain Specified Rights, Including the Right, Here Invoked, of Employes to be Free from Coercion in Their Choice of Representatives.

In addition to the considerations with respect to the legislative history and specific provisions of the Act which led this Court in the *Switchmen's Union* case to the conclusion that a Board certification is final and unreviewable and brings to an end all controversies involved in the particular representation dispute, there are other reasons strongly supporting the conclusion that it would be contrary to the intent of Congress to permit judicial relief to be had in a proceeding like the present one. In the first place, the provisions of Section 2, Tenth, of the Act, read in the light of their legislative history, clearly indicate that those provisions were intended by Congress to provide the sole and exclusive method of judicial enforcement of certain specified rights, including the right here in question, apart from the administrative remedy provided in Section 2, Ninth, and that if any judicial relief is to be had at all for infringement of those rights, it should be only through the provisions of Section 2, Tenth. In the second place, there are important practical considerations which support this view, and which Congress may well have had in mind in creating the scheme of statutory enforcement that it did.

1. *The Provisions of Section 2, Tenth, and Their Legislative History Manifest a Congressional Intent to Provide Thereby an Exclusive Method of Judicial Enforcement of Certain Specified Rights, Including the Right Here in Question.*

The right, here invoked by petitioners, of employes to be free from coercion, influence and interference in their choice of representatives, embodied in Section 2, Third, of the Act, is protected not only by the remedy of Board action provided for in Section 2, Ninth, but also by the specific provisions of Section 2, Tenth. Section 2, Tenth, after providing a penalty of fine or imprisonment for the wilful failure of a carrier or its officers to comply with the terms of the Third and certain other specified paragraphs of Section 2 of the Act, goes on to provide as follows:

> "It shall be the duty of any district attorney of the United States to whom any duly designated representative of a carrier's employees may apply to institute in the proper court and to prosecute under the direction of the Attorney General of the United States, *all necessary proceedings for the enforcement of the provisions of this section*, and for the punishment of all violations thereof." (Emphasis supplied.)

It is important to note that the above quoted language from Section 2, Tenth, indicates that the judicial remedy provided in that paragraph is not limited to criminal proceedings to punish violations of the rights specified, but also clearly contemplates affirmative judicial action in other types of proceedings, legal or equitable, brought by United States attorneys to prevent violations of Section 2 and to rectify conditions resulting from such violations. That meaning is the only possible interpretation of the words "all necessary proceedings for the enforcement of

the provisions of this section," which words are distinguished and set apart from what follows, namely, "*and* [proceedings] for the punishment of all violations thereof."

The present proceeding is of course not a proceeding brought under Section 2, Tenth. On the contrary, it is an attempt by petitioners to take into their hands and set up their own method for the enforcement of Section 2, Third, without the direction or concurrence of any District Attorney of the United States or the Attorney General, and therefore in disregard of and inconsistently with the specific procedure which Congress has expressly provided for such enforcement. That it was the Congressional intent to limit such enforcement to proceedings under Section 2, Tenth, and therefore to exclude a suit like the present one, is clear from the legislative history of Section 2, Tenth.

At hearings before the Senate Committee on Interstate Commerce in 1934, in connection with proposed amendments to the Railway Labor Act of 1926, which proposed amendments included the enforcement provisions that later became Section 2, Tenth, of the Act, Mr. Joseph B. Eastman, then Federal Coordinator of Transportation, under whose direction the original proposals for amendments had been drafted, discussed the provisions of the Railway Labor Act of 1926 with respect to interference, influence and coercion exercised by carriers over their employes in their designation of representatives. In connection with the portion of the 1926 Act dealing with that subject, Mr. Eastman said:

> "While this provision stated a noble purpose, it has not proved to be self-enforcing, and the act provided no other means of enforcement. Consequently the purposes were not accomplished." (Hearings, Committee on Interstate Commerce, United States Senate, on S. 3266, 73d Cong., 2d Sess., p. 11.)

Mr. Eastman made substantially the same statement to the House Committee on Interstate and Foreign Commerce at hearings held in connection with similar proposals for the amendment of the Railway Labor Act of 1926. (Hearings, Committee on Interstate and Foreign Commerce, House of Representatives, on H. R. 7650, 73d Cong., 2d Sess., p. 22.)

In explaining the purpose of the proposed amendments to the Act, insofar as they related to the prohibition against interference, influence and coercion, Mr. Eastman made the following significant statement to the Senate Committee, obviously in reference to the Section 2, Tenth, provisions (Hearings, p. 14):

> "In redrafting the provisions for incorporation in the Railway Labor Act, all of these points have been kept in mind, and it has also been the endeavor to cover specifically the various means whereby railroad managements have exerted or sought to exert undue influence upon the choice or conduct of labor organizations.
>
> "*Enforcement involves nothing but the determination of the facts, and for this reason it has in S. 3266 been definitely placed, where it belongs, in the hands of the Department of Justice.*" (Emphasis supplied.)

Mr. Eastman made substantially the same statement in his appearance before the House Committee on Interstate and Foreign Commerce (Hearings, p. 28).

In summarizing to the House Committee (Hearings, p. 43) the effect of the proposed changes in Section 2 of the Railway Labor Act of 1926, Mr. Eastman said:

> "I want to make it clear that the principle behind that section 2 is exactly the same principle which is now enunciated in the present section 2 of the present Railway Labor Act. However, so far as the present

act is concerned, there is no provision for the enforcement of that principle and it has not, in fact, been enforced.

* * * * * * * * *

"All that we are undertaking to do is to translate the principle which is now enunciated in the present Railways Labor Act into definite, specific provisions, free from ambiguities, *and with adequate provisions for their enforcement.* * * * It seeks only to give clarity, vitality, and positive sanctions to what is now, as far as the Railway Labor Act is concerned, no more than a pious wish." (Emphasis supplied.)

The report of the Senate Committee, favoring the adoption of the proposed amendments (S. Rep. No. 1065, 73d Cong., 2d Sess.) states at p. 2 of the report:

"Another extremely important change from the present law which this bill provides is that it prohibits any carrier from providing financial assistance to any union of employees from funds of the carrier. It also prohibits the railroads from interfering in any manner whatsoever with employees joining or refusing to join any organization or union. * * *

"This prohibition is not new. Congress has declared it three times: in the present Railway Labor Act, the Bankruptcy Act and the Emergency Transportation Act. But there are no penalties against its violation. *This bill provides severe penalties for violation of the law.*" (Emphasis supplied.)

The foregoing references to testimony before the Senate and House Committees considering the proposed amendments to the Railway Labor Act in 1934, and to the report of the Senate Committee, indicate that Congress understood at the time when the present amendments were

approved that those amendments were designed to set up a complete statutory scheme for the enforcement of the rights of collective bargaining guaranteed to employes by the provisions of Section 2 of the Act, including the right to be free from coereion in their choice of representatives. As pointed out above, this legislative intention is embodied in the actual language of Section 2, Tenth, which places in the hands of the United States attorneys the duty of instituting "all necessary proceedings for the enforcement of the provisions of this section", under the direction of the Attorney General, thereby placing enforcement "where it belongs, in the hands of the Department of Justice." Thus, both by the language of the Act and by its legislative history, it is apparent that the Railway Labor Act as now written is designed to provide an exclusive statutory scheme for the enforcement of the right of employes to be free from interference, influence and coercion by a carrier in their choice of a representative. There is no provision in that statutory scheme for a suit of the present character.

In this connection it is significant to note that the same conclusion was reached by the Mediation Board in this very case. In its letter to the President of the Conductors, rejecting that organization's protest against the holding of an election, the Board made the following statement (R. 39):

> "In this comment on carrier influence, it seems unnecessary to do more than point out to you that *the Railway Labor Act prescribes an exclusive procedure for the protection of employees in the choice of representatives. The provisions of Section 3* as quoted above may be made effective through the application of Section 10* of the Act.*"

This expression of opinion is obviously entitled to be given substantial weight, coming as it does from a body

* These references are obviously to Section 2, Third, and Section 2, Tenth, of the Act, as explained in the footnote on page 5 above.

charged with the administration of many of the features of the Railway Labor Act and experienced in the operation of the entire statutory scheme of that Act.

2. Practical Considerations Reinforce the Interpretation of Section 2, Tenth, as Intended to Provide an Exclusive Method of Judicial Enforcement of the Rights Specified.

Finally, certain practical considerations, which may well have been in the mind of Congress when it amended the Railway Labor Act in 1934, lead to the conclusion that the judicial remedy specified in Section 2, Tenth, for the enforcement of certain specified rights, including the right to freedom from interference, influence and coercion, is intended to be exclusive and to foreclose resort to the courts at the discretion of individual employes or labor organizations. Congress undoubtedly realized, as this Court pointed out in the *Switchmen's Union* case, that the choice of bargaining representatives by employes is "an explosive problem" which is highly charged with the emotional feelings of the participants. Following the disposition of such controversies it is only natural that those who are disappointed with the results frequently feel inclined to carry their grievances into the courts and to prolong the final disposition of the dispute by protracted litigation.

In such circumstances, it could be foreseen that the policy of the Railway Labor Act to provide for "prompt and orderly settlement" of disputes (Section 2, preliminary paragraph) would be defeated by the tendency of disappointed employes and labor organizations to attempt to salvage their lost causes by the aid of resort to judicial processes. To prevent that result from hampering the satisfactory operation of the Railway Labor Act, it was necessary to provide what might be called a "screening process," whereby charges of violation of Sec-

tion 2 of the Act which were without basis in fact could be prevented from crowding the dockets of the courts. The most ready means of accomplishing this selective supervision over such charges was a provision for initial handling by the United States attorneys, thereby, to quote Mr. Eastman, placing the enforcement "where it belongs, in the hands of the Department of Justice." These officers could consider not only the charges of violation of the Act but also the evidence available to substantiate those charges and, in that process, could prevent prospective litigants who had no adequate legal basis for complaint from dragging out their electioneering efforts before courts and juries after the Mediation Board had counted them out on the basis of the votes cast by the employes.

If the exclusive procedure specified by Congress had been followed in the present case, it is probable that this dispute would never have reached a district court, and certainly not this Court. By following the course which they have, the petitioners have succeeded in keeping the Pennsylvania Railroad and the certified representative of its road conductors in constant doubt for a period of more than two years as to their respective rights and duties, and, of more particular importance, in doubt with respect to the validity and permanence of the numerous negotiations, agreements, settlements and understandings which they have made with regard to employes in the class and craft of road conductors. It appears obvious that Congress did not contemplate paying so huge and unnecessary a penalty in the form of disrupted and uncertain labor relations merely for the purpose of making available additional and unnecessary means for the enforcement of Section 2, Third.

Thus, it is plain from the above considerations that, in view of this Court's decision in the *Switchmen's Union* case, and in view of the statutory scheme, consisting of the provisions of Section 2, Ninth, and Section 2, Tenth, of the Act, set up by Congress for the enforcement of the

right which petitioners here claim has been violated—which statutory scheme from its own provisions and legislative history was manifestly intended by Congress to be exclusive—and finally in view of the practical considerations which strongly support the view that such statutory scheme was designed to be exclusive, it must be concluded that to permit the maintenance of a suit of the present character, which finds no place in the statutory scheme, would be to extend the statute beyond the scope intended by Congress.

C. Petitioners' Argument in This Court, in Seeking to Escape the Effect of the Switchmen's Union Decision, is Fatally Defective in That it (*a*) Misconstrues the Decision of This Court in the Switchmen's Union Case; (*b*) Falsely Assumes That the Board Failed to Give Consideration to the Charges of Coercion in This Case; and (*c*) Disregards the Exclusive Character of the Statutory Scheme for Judicial Enforcement Embodied in Section 2, Tenth, of the Act.

In an endeavor to escape the consequences of this Court's decision in the *Switchmen's Union* case, the petitioners, in their position before this Court, are attempting to make it appear that they are not asking for a review of the Board's certification. Although the Board has been a party to this proceeding almost from its inception, the petitioners do not name the Board as a respondent to their petition in this Court. Actually, however, the petitioners are asking this Court to hold that the certification of the Board may be set aside in order to provide the allegedly necessary protection for the right of road conductors on the Pennsylvania Railroad to be free from interference and coercion in their choice of a representative. By not naming the Board as a respondent to their petition and by asserting that they are not asking this Court to reconsider its decision in the *Switchmen's Union* case, the peti-

tioners hope to make it appear that their case does not fall within the decision of this Court in that case.

Petitioners' position in this connection is substantially as follows: The *Switchmen's Union* decision held only that the right of a "majority of any craft or class of employees" to "determine who shall be the representative of the craft or class," which right is set forth in Section 2, Fourth, of the Act, may not be enforced by judicial proceedings since Congress intended that the enforcement of that right by the administrative action of the Board under Section 2, Ninth, should be exclusive. Petitioners then contend that the right involved in this case, guaranteed by Section 2, Third, of the Act, is somehow different, and that it cannot be enforced by the Board under Section 2, Ninth, because the Board in this case allegedly held that it could prevent violations of that right only when such violations occurred during the course of a representation election. Petitioners, purportedly on the basis of the *Switchmen's Union* decision, conclude that this alleged interpretation by the Board of its statutory powers and duties is conclusive, and they argue that, since the Board is thus legally unable to enforce the right guaranteed by Section 2, Third, in the present case, the road conductors on the Pennsylvania Railroad would be left without any remedy whatsoever against the asserted coercion and interference unless this Court decides to assume jurisdiction of the present proceeding. In this connection, petitioners rely upon the decisions of this Court in *Texas & N. O. R. Co.* v. *Ry. Clerks*, 281 U. S. 548 (1930), and *Virginian Ry.* v. *The Federation*, 300 U. S. 515 (1937), and upon the statement made by this Court in the *Switchmen's Union* case, (320 U. S. at p. 300), in explanation of these prior decisions, to the effect that:

> "If the absence of jurisdiction of the federal courts meant a sacrifice or obliteration of a right which Congress had created, the inference would be strong

that Congress intended the statutory provisions governing the general jurisdiction of those courts to control."

This line of argument leads the petitioners to the conclusion that, under the *Texas & N. O.* case, the *Virginian Ry.* case and the *Switchmen's Union* case, this Court must assume jurisdiction of the present proceeding in order fully to enforce the rights guaranteed by Section 2, Third, of the Act, and that such assumption of jurisdiction would be entirely in accordance with, and in no way inconsistent with, the decision of this Court in the *Switchmen's Union* case.

In this argument of petitioners there are three fatal faults. The first is the petitioners' assumption that the *Switchmen's Union* case simply held that the rights guaranteed by Section 2, Fourth, of the Act may only be enforced by the exclusive administrative procedure provided by Congress in Section 2, Ninth, of the Act. The second fallacy into which the petitioners have fallen consists of the assertion that the Board in this case, in failing to give effect to the petitioners' charges of coercion and interference and to postpone the election as requested by them, refused to consider or pass upon those charges and that it did so for the sole reason that it believed it had no authority under the law to investigate them because they related to events occurring prior to the actual election of representatives among the road conductors. The final defect in petitioners' argument in this connection lies in the fact that they ignore entirely the provisions of Section 2, Tenth, of the Act, which provide a complete and adequate judicial remedy for the enforcement of the right of employes to be free from coercion and interference in their choice of a representative, even assuming that the Board in this case did not consider the merits of the petitioners' charges of coercion and interference, and assuming that the *Switchmen's Union* decision had not been made.

1. *The Holding of This Court in the Switchmen's Union Case Was to the Effect That a Certification by the Board is Final and Disposes Conclusively of All the Issues Arising in the Course of a Representation Dispute, and Not Merely Issues Arising From an Asserted Violation of Section 2, Fourth, of the Act.*

In their argument before this Court, the petitioners contend (petitioners' brief, pp. 23-25) that the decision in the *Switchmen's Union* case was merely to the effect that the federal courts do not have jurisdiction to enforce the "majority" right of representation guaranteed by Section 2, Fourth, of the Act, and that the Mediation Board, acting under Section 2, Ninth, had the exclusive power to enforce that right. But the decision in the *Switchmen's Union* case was not so limited.

The actual holding by this Court in the *Switchmen's Union* case is stated as follows, at the outset of the majority opinion after the statement of the facts in the case (320 U. S. at p. 300):

> "We do not reach the merits of the controversy. For we are of the opinion that *the District Court did not have the power to review the action of the National Mediation Board in issuing the certificate.*" (Emphasis supplied.)

Thus, the actual decision of this Court in the *Switchmen's Union* case was, not that Section 2, Fourth, is enforceable only by administrative action of the Board under Section 2, Ninth, but that a certification issued by the Board represents a final, conclusive and unreviewable determination of the representation dispute for which it is issued, and that any such representation dispute between rival labor organizations which culminates in such a certification is thereby finally disposed of and cannot thereafter be the subject of consideration in a judicial proceeding. The exact nature of the holding by this Court in the

Switchmen's Union case is again emphasized in the statement that "Congress gave administrative action under §2, Ninth a finality which it denied administrative action under the other sections of the Act", which statement appears near the end of the opinion of the majority in that case (320 U. S. at p. 306).

As pointed out above (pp. 17-19), the actual decision thus made by this Court was founded upon four distinct considerations. The petitioners' first error lies in the fact that they regard one of those four considerations as constituting the whole decision of the Court. The four factors which led this Court to its ultimate conclusion that a certification by the Board is final and unreviewable were the following: (*a*) the history of Congressional legislation in the field of railroad labor relations indicates that, in the present Act, "Congress intended to go no further in its use of the processes of adjudication and litigation than the express provisions of the Act indicate"; (*b*) the enforcement of the right guaranteed by Section 2, Fourth, is placed in the hands of the Mediation Board by Section 2, Ninth, and Congressional "specification of one remedy normally excludes another"; (*c*) the "statutory mandate" of Section 2, Ninth, requiring a carrier to "treat" with the representatives certified by the Board, is explicit and unconditional, thus indicating a Congressional intention that the representation dispute "was to reach its last terminal point when the administrative finding was made"; and (*d*) the fact that Congress provided for judicial review of certain administrative actions under the Act but did not expressly provide for such review of a certification by the Board is an indication of a Congressional intention to make such a certification final and unreviewable.

When the decision of this Court in the *Switchmen's Union* case is thus correctly analyzed, it will be seen that the fact that Congress placed the enforcement of the right guaranteed by Setion 2, Fourth, in the hands of

the Mediation Board by establishing that enforcement function as one of the Board's duties under Section 2, Ninth, was merely one of the four distinct factors which led this Court in that case to its ultimate decision that Congress intended a certification issued by the Board under Section 2, Ninth, to be final and unreviewable. The chief fallacy in petitioners' attempt to distinguish the present proceeding from the *Switchmen's Union* case is that petitioners' argument is founded entirely on an attempted differentiation between Section 2, Third, and Section 2, Fourth, and on the fact that Section 2, Fourth, was involved in the *Switchmen's Union* case while this case involves Section 2, Third. For the reasons already stated, it is clear that Section 2, Third, is indistinguishable from Section 2, Fourth, so far as the holding in the *Switchmen's Union* case is concerned, and that the Congressional intent of complete finality of a Board certification, found in that case to attach to a certification determining a dispute involving Section 2, Fourth, is equally applicable to a Board certification determining a dispute involving Section 2, Third.

However, even if the status of Section 2, Third, in the statutory scheme of the Act were in some way distinguishable from the status of Section 2, Fourth, that fact would be insufficient to prevent the application of the decision in the *Switchmen's Union* case to the present proceeding. The history of railway labor legislation, the provision of Section 2, Ninth, requiring a carrier to treat with the representative certified by the Board, and the absence of an express statutory provision for judicial review of a Board certification—factors upon which this Court relied in the *Switchmen's Union* case—are still present in this case as an indication of the intent of Congress with regard to the finality of a certification. In short, a certification issued by the Board under Section 2, Ninth, is either reviewable or not reviewable. Since this Court specifically decided in the *Switchmen's Union* case that a

certification is not reviewable, and since that decision was founded upon several indications of Congressional intent which are equally valid here, the petitioners' contention to the contrary in this case must fail unless the *Switchmen's Union* decision is overruled and the Congressional purpose is found to be contrary to what it was declared to be in that case.

2. *The Board Did in Fact, Contrary to Petitioners' Assertion, Give Consideration to Their Charges of Coercion Before Holding the Election, and Thus Fulfilled its Duty Under Section 2, Ninth, in This Case.*

On the basis of their erroneous interpretation of the *Switchmen's Union* case, discussed immediately above, the petitioners go on to contend that the rule of administrative finality of a Board certification is not applicable to the present proceeding because of the Board's asserted failure in this case to fulfill its duty under Section 2, Ninth, in that it allegedly refused to give consideration to the charges of coercion and interference which the petitioners presented to it prior to the election, and which are the same charges as those now contained in the present complaint. That contention is based upon a mistaken understanding of the Board's position with respect to the petitioners' charges. Petitioners placed their charges of coercion before the Board more than a month prior to the holding of the election (R. 23, 86). What the Board thought of those charges can best be determined by a consideration, not only of what the Board said, but of what the Board did after it had those charges before it.

(a) *The Action of the Board.*

That the Board gave extended consideration to the petitioners' charges first appears from the fact that the Board wrote a long and carefully reasoned letter to the

petitioners about them (R. 33-40). Thereupon, having these charges before it and after giving extensive consideration to them, the Board proceeded to hold an election among the road conductors, and, as a result of that election, certified the Trainmen as the duly accredited bargaining representative of that class or craft of employes on the Pennsylvania Railroad. The Board thus refused to grant the petitioners' request to postpone the election on the basis of the charges made against the Trainmen and the Railroad.

Plainly, if the Board had thought that the acts alleged to have been committed by the Trainmen and the Railroad would prevent the free and uncoerced exercise by the employes of their choice of a representative, it would have refrained from holding the election, as the petitioners requested. Regardless of what the Board may have said, or what reasons it may have given for not acceding to the petitioners' request, the mere fact that the Board proceeded with the election and issued a certification is a conclusive indication that it did not consider the petitioners' charges of coercion as substantial or meritorious. It certainly may not be assumed that an administrative agency charged by law with the duty of determining representation disputes among groups of employes in such a way as to secure the free and uncoerced choice of those employes, would proceed with an election among the employes and issue a final certification of their authorized representative when that administrative agency had any reason to believe, or even to suspect, that the employes were not entirely free and uncoerced in making their choice.

Any such assumption would be particularly inappropriate in this case, since the petitioners have not seen fit to name the Board as a respondent in this Court, and there is, therefore, no opportunity for the Board to explain directly to the Court its actual opinion of the petitioners' charges of coercion. In the absence of any such opportunity for the Board to give its own explana-

tion of its action in proceeding with an election after charges of coercion had been filed with it; that action must be taken as conclusively demonstrating the Board's opinion that the charges were unsubstantial and, even if true, did not indicate the existence of any coercion or interference in violation of the provisions of the Act.

But even if the Board's action should not be taken as a conclusive indication of its view and it should be regarded as necessary to look at the Board's statements, there is in those statements ample evidence of the Board's views with respect to the petitioners' charges.

(b) *The Statements of the Board.*

Petitioners point to some language in the Board's letter to the President of the Conductors, in which the Board rejected their protest against the holding of the election (R. 33-40), and argue that, since the Board there stated that it had no jurisdiction over the circumstances alleged by petitioners as having constituted coercion and interference, the petitioners' charges must be treated as having been ignored by the Board. But the fact that the Board stated it lacked jurisdiction of the matters complained of did not in any way impair the finality which, under the *Switchmen's Union* decision, must be attributed to the Board's action in certifying the Trainmen as the proper representative of road conductors. In the *Switchmen's Union* case, the Board, in refusing to give effect to the protest made against its holding an election, did so there, as here, on the ground that under the Act it had "no discretion" to do what the protestants asked it to do, namely, to treat different parts of a railroad system as separate units for the purpose of determining representatives (320 U. S. at p. 309). Despite that fact, this Court held the Board's determination as to the proper representative to be final, and decided that the courts were precluded from passing upon the protestants' objection with respect to which the Board had said it had no discretion. The same conclusion should be reached here.

Petitioners in their argument assume that the Board refused to give effect to their charges of coercion solely for the reason that the alleged acts of coercion took place prior to the election and that the Board therefore had no jurisdiction to consider them. This assumption attributes less perspicacity to the Board than is warranted, and is, in fact, contrary to the Board's own statements. The fact is that it is plain from the Board's various statements on the subject, including not only its letter to the petitioners but its original and amended answers filed in this case and its brief in the court below, that the Board did not refrain from giving effect to petitioners' charges simply because the time of occurrence of the acts charged was prior to the election. On the contrary, in referring to the fact that the alleged acts of coercion occurred prior to the election, the Board was attempting to express its view, which it subsequently made clear, viz., that it was not concerned with the alleged acts of coercion because they were not related to and had no bearing or effect on the election, and that despite those acts, even if the charges regarding them be accepted as true, the employes exercised their choice of a representative in a free and uncoerced manner (see discussion at pp. 9-10 above, and pp. 5a-12a of Appendix hereto).

Thus, contrary to the petitioners' assumption, the actual facts are that the Board did consider petitioners' charges, and did determine that the employes' exercise of their choice of a representative was free and uncoerced.

With respect to acts of coercion and influence which have no effect on and do not prevent the free exercise of the employes' choice of a bargaining representative, the Board correctly took the position that it had no jurisdiction. There is no question before the Court in this case as to whether such acts may constitute a violation of the Railway Labor Act and, if so, what remedy, if any, is appropriate for one prejudiced thereby, because petitioners' only complaint herein with respect to alleged coercion is that it interfered with the right of the em-

ployes to a free choice of representatives. If such question were before the Court, the answer would be, first, that it is only coercion and interference which prevents the free exercise of the employes' choice of a representative, or the free organization and management of a labor union, that is forbidden by the Act, and second, the remedy in any event would not be in a proceeding like the present one but would be in a proceeding brought under Section 2, Tenth.

3. A Complete and Adequate Remedy is Available to Employes, Under Section 2, Tenth, For the Enforcement of Their Right to Freedom From Coercion, Whether or Not the Provisions of Section 2, Ninth, Provide Such a Remedy and Whether or Not the Board in This Case Performed Its Full Duty Under Section 2, Ninth.

It has been shown above (pp. 35-42) that the petitioners, in order to avoid the application of the *Switchmen's Union* decision, have erroneously assumed that that case was decided only in the light of Section 2, Fourth, of the Act, and that Section 2, Ninth, of the Act does not provide petitioners with a remedy for the enforcement of the rights guaranteed by Section 2, Third, because the Board in this case did not fulfill its duty under Section 2, Ninth, in that it allegedly failed to give consideration to the petitioners' charges of coercion and interference by the Railroad. The petitioners' argument in this connection is based on those erroneous assumptions and upon the further contention that, unless petitioners are permitted to obtain relief in a suit of this character, the right of employes to be free from coercion, interference and influence in their choice of a representative—which right petitioners claim has in some way been violated in this case—will be left unprotected in any case where, as petitioners here claim, the Mediation Board for any reason refuses to consider or pass upon the employes' charges of coercion. That contention completely ignores the provisions of Section 2, Tenth.

Section 2, Tenth, provides for the protection of rights embodied in Section 2, including the right of freedom from coercion, through the bringing of any proceeding, criminal or otherwise, which may be necessary for the protection of those rights. Such a proceeding, however, cannot be brought by a private party but must be brought by a district attorney of the United States and must be prosecuted under the direction of the Attorney General. It has been shown above (pp. 25-30) that this method for the protection of rights guaranteed by Section 2, together with the remedy provided in Section 2, Ninth, constitutes an exclusive statutory scheme for the enforcement of the rights in question, including the right to freedom from coercion and interference in the choice of representatives, and that proceedings like the present one which lie outside the statutory scheme are therefore barred. Within the framework of that statutory scheme, the employes are not limited to relief through Board action, as provided in Section 2, Ninth, but may obtain judicial relief through the aid of the Department of Justice, if necessary. It is clear, therefore, that denial of the petitioners' present suit will not mean the exclusion of employes from judicial relief, entirely apart from Board relief, for the protection of their right to freedom from coercion, and therefore will not mean the obliteration of that right.

It follows from what has been said above that, contrary to the petitioners' contention, the decisions of this Court in *Texas & N. O. R. Co.* v. *Ry. Clerks*, and *Virginian Ry.* v. *The Federation*, *supra*, have no application to this case. Those cases are explained by Mr. Justice Douglas in the *Switchmen's Union* decision as supporting the proposition that judicial relief through the general jurisdiction of the courts will be granted where the failure to do so would result in the obliteration of a right created by Congress. But the denial of relief to petitioners in this suit will not mean the

obliteration of any such right, for the reasons already stated.

In the *Clerks* case, it was found necessary to grant such relief because the statute then before the Court—viz.: the Railway Labor Act of 1926, made no provision for means of enforcement of the right, created by that statute, of railroad employes to be free from carrier coercion and interference in their choice of representatives. Under the Act, as amended in 1934, employes have been provided with two specific remedies for the protection of that right—administrative action under Section 2, Ninth, and judicial action under Section 2, Tenth. Petitioners here have had the benefit of the administrative remedy, but nevertheless are attempting in this case to obtain judicial relief in a proceeding that is inconsistent with the judicial remedy specified in the statute.

The *Virginian Ry.* case differed essentially from the present case in that the acts of coercion and interference alleged in that case occurred after the Mediation Board had certified the union as the representative of the employes and related only to the alleged attempts by the carrier to prevent the union from acting as such representative. Thus, the charges of coercion and interference in that case had no bearing whatsoever on the validity of an election held by the Board, and were not passed upon by the Board as a part of its administrative action under Section 2, Ninth. Judicial protection of the right to freedom from coercion, in the *Virginian Ry.* case, was therefore granted in aid of, and not in derogation of, the administrative determination. In the present case, on the other hand, the alleged acts of coercion were considered by the Board and the Board refused to postpone its investigation of the representation dispute because it believed that the charges of coercion, even if true, could have no effect on the election and therefore did not establish such coercion or interference as is prohibited by the Act (see pp. 9-10 above). Judicial action is now sought to set aside the administrative action.

Furthermore, it should be noted that in the *Virginian Ry.* case, this Court did not have before it the question whether the right to freedom from coercion and interference can be enforced in a proceeding brought under the general jurisdiction of the federal courts, as is evident from the following language in the opinion (300 U. S. at pp. 543-4):

> "Petitioner does not challenge that part of the decree which enjoins any interference by it with the free choice of representatives by its employees, and the fostering, in the circumstances of this case, of the company union."

It is true that this statement was followed in the Court's opinion by a statement to the effect that that question could not be raised because it had been settled by the *Clerks* case. But it is obvious that the Court did not then have in mind the considerations which it has spelled out in the *Switchmen's Union* case, nor did it have in mind the fact that Section 2, Tenth, added to the Act after the decision in the *Clerks* case, had provided a specific method for judicial protection of the right to freedom from coercion and therefore had eliminated the necessity which the Court in the *Clerks* case had found, under the 1926 Act, of resorting to the general jurisdiction of the courts for the protection of that right.

II. Under the Decisions of This Court in the M.-K.-T. R. Co. Case and the Southern Pacific Case, the Issues Presented by the Petitioners' Complaint Are Not Justiciable Because They Require a Determination of the Conflicting Jurisdictional Claims of Rival Labor Organizations, and the Fact that Conduct Alleged to Have Violated Jurisdictional Rights is Also Labelled as Carrier Coercion Does Not Alter the Result.

As pointed out above (at pp. 2-4), the present case arose out of, and the complaint is ultimately based

upon a jurisdictional dispute between the Conductors and the Trainmen as to which of the two organizations had the right to negotiate and bargain with the Railroad concerning the rates of pay and working conditions of "assistant conductors or ticket collectors" and the movement of employes into and out of the brakeman class. An identical type of dispute was before this Court in *General Committee* v. *M.-K.-T. R. Co.*, and *General Committee* v. *Sou. Pac. Co.*, *supra*.

In both the *M.-K.-T.* case and the *Southern Pacific* case, as in the instant case, the petitioner was a labor organization and the respondents were a carrier and a rival labor organization. In each of those cases the petitioner complained that the carrier had entered into agreements with the respondent labor organization, and the petitioner contended that those agreements were illegal and void under the Railway Labor Act because they constituted an encroachment upon the bargaining authority or jurisdictional rights of the petitioner. Upon a review of the history and applicable provisions of the Act, this Court concluded that the federal courts are without power to resolve such jurisdictional controversies because the question as to the respective bargaining jurisdictions of rival labor organizations does not present justiciable issues. It was held that, since no specific provision in the Railway Labor Act authorized judicial determination of jurisdictional disputes, "Congress intended to go no further in its use of the processes of adjudication and litigation than the express provisions of the Act indicate," and that the judicial power of the federal courts did not extend to controversies of that type. (*M.-K.-T.* case, 320 U. S. 323, at p. 333).

In the present case, as in the *M.-K.-T.* case and the *Southern Pacific* case, the entire controversy originated out of the conflicting demands of two rival labor organizations. The Conductors and the Trainmen were conducting joint negotiations with the Railroad. In the course of those negotiations, the Conductors and the Trainmen found

themselves in conflict with regard to their respective jurisdictional rights to represent and negotiate in behalf of certain groups of employes. After the Conductors withdrew from the joint negotiations, as a direct result of their dispute with the Trainmen, the Railroad was faced with the necessity of concluding an agreement with one or the other of the two unions, an agreement with both being apparently impossible because of their conflicting claims. It ultimately reached an agreement with the Trainmen, and that agreement, among other things, fixed the rates of pay and working conditions of a group of employes known as "assistant conductors or ticket collectors" and provided rules governing the movement of employes between the brakeman class and the conductor class, these being the matters with respect to which the Conductors and the Trainmen had been in disagreement as regards their respective jurisdictional bargaining rights (see pp. 3, 6 above).

Following the agreement between the Railroad and the Trainmen, the Conductors continued to insist that they alone had the right, under the Railway Labor Act, to negotiate with the Railroad concerning these matters. However, having entered into an agreement with the Trainmen, the Railroad found itself unable to enter into a new and conflicting agreement with the Conductors on the same subjects. Thus a deadlock developed in the negotiation of rules governing the class of road conductors, and it was apparently for the purpose of breaking that deadlock that the Trainmen invoked the services of the Mediation Board to determine the authorized bargaining representative of the class of road conductors. Having assumed jurisdiction of this representation dispute, the Board held an election and certified the Trainmen as the duly accredited representative of road conductors.

All of the allegations in the complaint charging unlawful conduct on the part of the Railroad relate to the

facts of the jurisdictional dispute between the Conductors and the Trainmen, and to the consequences immediately following upon the Railroad's decision to make an agreement with the Trainmen. The ultimate basis of the complaint of the Conductors against the Railroad is simply that the Railroad negotiated with the Trainmen concerning matters with respect to which the Conductors claim, as against the Trainmen, to have had exclusive bargaining jurisdiction.

4. All the Charges in the Complaint With Respect to Coercion and Influence Relate to the Jurisdictional Dispute Between the Two Rival Labor Organizations and Therefore Present Non-Justiciable Issues.

It is clear from a consideration of the charges of coercion and influence contained in the complaint that those charges relate entirely to the jurisdictional dispute between the Conductors and the Trainmen and that the whole course of conduct complained of constituted an integral part of that dispute and its immediate consequences.

That course of conduct consisted of the following alleged acts: (*a*) the completion and circulation among the employes of an agreement between the Railroad and the Trainmen after the withdrawal of the Conductors from the three-party negotiations (R. 14-15); (*b*) the alleged dilatory tactics on the part of the Railroad, and its asserted refusal to negotiate in good faith with the Conductors (R. 15-16); (*c*) the making and publication of an agreement between the Railroad and the Trainmen in settlement of claims filed by the Trainmen against the Railroad (R. 15); (*d*) the making of statements and representations by representatives of the Railroad in conference with representatives of the Conductors (R. 16).

1. *Nature of the Acts Complained of.*

With respect to the acts which are thus alleged by petitioners to have constituted unlawful coercion, influence and interference in the employes' choice of their representative, it should first be noted that all of these acts occurred in the course of, and as part of, the process of bargaining and negotiation that took place among the representatives of the two unions and the Railroad, and that none of them involved any contact by the Railroad with the individual conductors themselves, with the possible exception of the alleged publication of the two agreements between the Railroad and the Trainmen.

At the very most, the allegation of such conduct on the part of the Railroad amounts to no more, insofar as impact on the employes themselves is claimed, than a charge of persuasion of the employes that the Trainmen's organization constituted a better bargaining agent than did the Conductors' organization. This is evident from the petitioners' own language in their complaint, wherein they describe the "plan of action or program" undertaken by the Railroad and the Trainmen as being "designed to embarrass, discredit, and weaken the ORC and to assist and strengthen the BRT" (R. 14). Petitioners, apparently aware of a fundamental weakness in their position in this respect, do not in their brief speak of these acts as having constituted actual coercion upon the employes, but describe them as having "influenced" the employes as to their choice, apparently thus basing their claim of violation of Section 2, Third, on the "influence" portion of the phrase "interference, influence or coercion," as used in that Section. For example, petitioners in summarizing the acts complained of in their brief use the following language (petitioners' brief, p. 28): "Beginning August 3, 1942, Pennsylvania began engaging in conduct which, as Pennsylvania intended it would, *influenced* the craft of road conductors to *believe* their current representative, ORC, was a *less effective bargain-*

ing agent than BRT" (Emphasis supplied). Thus petitioners' contention now apparently is reduced to claiming that Section 2, Third, was violated because the Railroad engaged in conduct which "influenced," *i. e.*, had a tendency to persuade the employes that the Trainmen's organization was a better bargaining agent than the Conductors' organization.

In taking this position, petitioners ignore the fact that this Court, in construing the phrase "interference, influence or coercion," pointed out in its decision in *Texas & N. O. R. Co.* v. *Clerks*, *supra*, that the meaning of the word "influence" must be gathered from its association in the statute with the words "coercion" and "interference"; and that the whole phrase plainly refers to "pressure, the use of the *authority* or *power* of either party to induce action by the other in derogation of what the statute calls 'self-organization';" and "the abuse of relation or opportunity so as *to corrupt or override the will*" (Emphasis supplied) (281 U. S. at page 568).

It is difficult to understand how acts of the character complained of by petitioners, such as the making of agreements between the Railroad and the Trainmen's organization, the publicizing of those agreements, and the making of statements and representations to representatives of the Conductors' organization in the course of bargaining negotiations with them, which are now described by petitioners as having merely "influenced" or tended to persuade the employes, can, in any fair or proper sense, be regarded as having corrupted or over-ridden the will of the employes in their exercise of the choice of a representative.* So far from having constituted overriding coercion, they were merely part of the ordinary processes of negotiation and of bargaining persuasion, and in that respect the bargaining processes here were not different from those which normally take place in collective bargain-

*See discussion quoted at pp. 10a-12a of the Appendix herein, from the Mediation Board's brief in the court below.

ing negotiations, especially where inter-union jurisdictional disputes are involved. Plainly, the acts here complained of as having constituted coercion were done in the course of and constituted an integral part of the bargaining negotiations among the two unions and the Railroad, and therefore came within the limits of the jurisdictional dispute between the two unions, which constitutes the basis of the present case.

2. All the Acts Complained of Constituted an Integral Part of the Jurisdictional Dispute.

Petitioners apparently concede that most of the acts complained of constituted part of the jurisdictional dispute—and therefore that the core of their case against the Railroad lies in their charge of violation of petitioners' alleged exclusive bargaining jurisdictional rights—because in their brief (pp. 15-16) only two of the acts in question are referred to—and then only briefly—as lying outside of the inter-union jurisdictional dispute. The first of these two is the making and publication of the agreement between the Railroad and the Trainmen for the settlement of claims filed by the Trainmen with the National Railroad Adjustment Board against the Railroad, and the second is the claimed failure of the Railroad to confer and negotiate promptly and in good faith with the Conductors, following the withdrawal of the latter from the three-party negotiations (R. 14-16).

With regard to the first of these two alleged acts now relied on by petitioners as not constituting a part of the jurisdictional dispute, and as therefore placing their complaint outside the scope of the *M.-K.-T.* and *Southern Pacific* cases, it is clear that the settlement of the claims of the Trainmen was a part of the agreement made by the Railroad with the Trainmen for the purpose of ending the jurisdictional controversy between the rival unions, and thus avoiding the impasse in which that con-

troversy had placed the Railroad. Petitioners cannot be attempting in this case to assert as a legal proposition that a railroad is forbidden by law to make an agreement with a duly accredited representative of railroad employes in settlement of claims made by that representative on behalf of those employes. Petitioners' essential objection to this settlement agreement lies merely in the alleged fact that the advantage accruing to the Railroad from the settlements constituted the consideration offered by the Trainmen in return for the Railroad's purported decision to acquiesce in the Trainmen's claims in the jurisdictional dispute.* As such, the charge with reference to the settlement of claims is an integral part of the petitioners' contention that their jurisdictional bargaining rights were violated.

With respect to the only other alleged act, or series of acts, claimed by petitioners as lying outside the jurisdictional dispute, viz., that involved in the charge that the Railroad delayed negotiations with the Conductors and failed to bargain in good faith with representatives of that organization, that series of acts constitutes merely one more of the many integral factors in the jurisdictional dispute. The only specific charge of delay in negotiations set forth in the complaint is to the effect that the Railroad did not hold any conferences with the Conductors between July 24, 1942, and August 27, 1942, yet the complaint

* It is plain from Paragraph 33 of the Complaint that the basic objection to the agreement in settlement of claims lies in the fact that that agreement allegedly constituted the consideration for the Railroad's willingness to agree with the Trainmen in the jurisdictional dispute. That paragraph reads in part (R. 16-17):

"The Penn RR agreed to the said unlawful plan of action * * * to secure a commitment from the BRT to adjust time claims of road brakemen, pending before the First Division of The National Railway Adjustment Board, at greatly reduced amounts."

† It is a well settled rule that general allegations in a complaint must be read in the light of and construed as limited by the complaint's specific allegations on the same subject. *See, e. g., Sinclair Refining Co. v. Stevens*, 123 F. 2d 186 (C. C. A. 8th, 1941), cert. den. 315 U. S. 804; *Tzachtman v. Connelly*, 106 F. 2d 501 (C. C. A. 6th, 1939).

shows (R. 7, 15) that the Conductors' representatives by their own action broke up the three-party negotiations by withdrawing from them on August 3, 1942, thereby effecting a change in the relationship between the parties which had existed for a score of years.

Furthermore, the complaint shows that the Railroad did not refuse to confer or negotiate with the Conductors, because the Railroad's representatives did meet with those of the Conductors on August 27, 1942, within a few weeks after the Conductors' withdrawal from the three-party negotiations and shortly after the conclusion of the negotiations which had continued between the Railroad and the Trainmen subsequent to the Conductors' withdrawal (R. 15, 29). Plainly, such failure as there was, during that short period, to hold a conference between the Conductors' and the Railroad's representatives was the direct result of the disrupting influence on the relations between parties which was brought about by the jurisdictional dispute between the two unions and the Conductors' withdrawal from the negotiations.

The charge against the Railroad of delaying negotiations with the Conductors is thus merely an attempt to place upon the Railroad the onus of the Conductors' own actions, whereas the fact is apparent that such slight delay as there was arose out of the jurisdictional dispute which the Conductors were at that time having with the Trainmen.

To the extent that this charge of the petitioners alleges a failure on the part of the Railroad to bargain in good faith with the Conductors, it is simply a charge that the Railroad failed to acquiesce in the Conductors' claims as to their alleged bargaining jurisdictional rights, and instead acquiesced in the opposing claims of the Trainmen (R. 12). The charge of lack of good faith in bargaining with the Conductors plainly relates to the jurisdictional dispute.

It is therefore clear, from a study of the allegations

in the complaint and from the petitioners' argument in their brief in this Court, that all the charges in the complaint against the Railroad relate to the jurisdictional dispute between the Conductors and the Trainmen, and that the acts charged constituted in fact integral phases of that dispute and its immediate consequences. To state it another way, the entire course of conduct and of dealings among the Conductors, the Trainmen and the Railroad which is described in the complaint constitutes one whole and indivisible pattern of bargaining and negotiating relations among the parties with respect to the respective jurisdictional bargaining rights of the two unions, centering upon the specific dispute between the two unions, the impasse in which that dispute placed the Railroad, and the immediate consequences whereby that impasse was avoided and the dispute ended.

3. *Since All the Acts Complained of Constituted Part of the Jurisdictional Dispute, the Issues Here Presented Are Non-Justiciable Under the M.-K.-T. and Southern Pacific Decisions.*

It follows that the controversy here presented is in all its essentials merely a familiar form of jurisdictional dispute between two rival railroad labor organizations. The case thus consists of a jurisdictional dispute of the same type and character as those involved in the *M.-K.-T.* case and the *Southern Pacific* case. Speaking of such disputes, this Court said in the *M.-K.-T.* case (at pp. 334-7 of 320 U. S.):

> "It is true that the present controversy grows out of an application of the principles of collective bargaining and majority rule. *It involves a jurisdictional dispute—an asserted overlapping of the interests of two crafts. It necessitates a determination of the point where the authority of one craft ends and the other begins or of the zones where they have*

joint authority. * * * Congress did not attempt to make any codification of rules governing these jurisdictional controversies. It did not undertake a statement of the various principles of agency which were to govern the solution of disputes arising from an overlapping of the interests of two or more crafts. It established the general principles of collective bargaining and applied a command or prohibition, enforcible by judicial decree to only some of its phases. * * *

"It seems to us plain that when Congress came to the question of these jurisdictional disputes, it chose not to leave their solution to the courts. * * * *Rather the conclusion is irresistible that Congress carved out of the field of conciliation, mediation and arbitration only the select list of problems which it was ready to place in the adjudicatory channel. All else it left to those voluntary processes whose use Congress had long encouraged to protect these arteries of interstate commerce from industrial strife. The concept of mediation is the antithesis of justiciability."* (Emphasis supplied.)

The issues raised by the petitioners' complaint in the instant case fall squarely within the principle laid down by this Court in the language quoted above in the *M.-K.-T.* case and the *Southern Pacific* case. There is here "an asserted overlapping of the interests of two crafts," and, although the petitioners contend that the actions of the Railroad in dealing with the jurisdictional dispute between the Conductors and the Trainmen constituted unlawful coercion and interference with the class of road conductors in their choice of a representative, a decision on those charges of coercion and interference plainly "necessitates a determination of the point where the authority of one craft ends and the other begins."

The parallel to the *Southern Pacific* case is practically a perfect one. There, as here, one railroad labor organization, the Engineers, claimed that an agreement between the Railroad and another organization, the Firemen, infringed the alleged bargaining rights of the Engineers' organization because it included provisions with respect to persons in the class of engineers (pp. 339-340 of 320 U. S.). There, as here, the contentions of the opposing parties were carried to the point where it was argued that a contract between the Railroad and one of the unions, giving that union the exclusive right to represent engineers with respect to the matters in question, would in effect coerce all engineers into joining that union instead of the other union, and would therefore result in a violation of Section 2, Third, and 2, Fourth, of the Railway Labor Act.* This Court nevertheless held that the issues presented were not justiciable saying (at pp. 343-4 of 320 U. S.):

> "We are concerned only with a problem of representation of employees before the carriers on certain types of grievances which, though affecting individuals, present a dispute like the one at issue in the *Missouri-Kansas-Texas R. Co.* case. *It involves, that is to say, a jurisdictional controversy between two unions. It raises the question whether one collective bargaining agent or the other is the proper representative for the presentation of certain claims to the employer. It involves a determination of the point where the exclusive jurisdiction of one craft ends and where the authority of another craft begins.* For the reasons stated in our opinions in the *Missouri-Kansas-Texas R. Co.* case and in the *Switchmen's* case, we believe that *Congress left the so-called jurisdictional*

* "They point out that §2, Third and Fourth prohibit the carrier from influencing employees in their choice of representatives. The argument is that a contract by the carrier with the Engineers giving the latter the exclusive right to represent engineers in the presentation of their individual claims would in effect coerce all engineers into joining that union in violation of §2, Third and Fourth." (320 U. S. at p. 342.)

controversies between unions to agencies or tribunals other than the courts. We see no reason for differentiating this jurisdictional dispute from the others." (Emphasis supplied.)

This language is exactly applicable to the case at bar. Plainly, the non-justiciable character which the Court there attributed to issues raised by a jurisdictional controversy between two unions is absolute and admits of no exceptions, such as those now urged by petitioners.

B. PETITIONERS' ARGUMENTS IN ATTEMPTING TO AVOID THE EFFECT OF THE M.-K.-T. AND SOUTHERN PACIFIC CASES WOULD IF SUSTAINED NULLIFY THE PRACTICAL SIGNIFICANCE OF THOSE CASES, BECAUSE THEY WOULD ENABLE A LABOR ORGANIZATION DISAPPOINTED IN ITS BARGAINING EFFORTS TO DRAG ITS CONTROVERSY WITH A RIVAL LABOR ORGANIZATION AND THE RAILROAD INTO THE COURTS BY MERELY ATTACHING THE LABEL OF COERCION TO THE BARGAINING ACTIONS OF THE RIVAL ORGANIZATION AND THE RAILROAD.

From their brief filed in this case, it becomes clear that the petitioners are arguing that, although the federal courts have not been given the power to resolve jurisdictional disputes, it is only necessary to assert that the actions of the Railroad in connection with that dispute constituted coercion and interference in order to place the jurisdictional controversy before the courts. In substance, petitioners are contending that the courts may now accomplish by indirection what the *M.-K.-T.* and the *Southern Pacific* cases specifically held they could not accomplish directly.

1. *The Charges in the Present Case Cannot be Adjudicated Without a Determination by the Courts as to the Respective Bargaining Jurisdictions of the Conductors and the Trainmen.*

In following their line of argument in this respect, petitioners first contend that, in order to grant them the

requested relief, it is not necessary to determine the respective bargaining jurisdictions of the two unions or to decide whether or not the agreement which the Railroad made with the Trainmen constituted an unlawful infringement upon the Conductors' asserted bargaining jurisdiction. In order to reach this conclusion, petitioners assert that the only proof necessary to establish unlawful interference and coercion by the Railroad is proof that an action by the Railroad did, as a matter of fact, "influence" or have a tendency to persuade certain employes in their choice of a representative. It is stated that the only possible defense open to the Railroad, once such action is proven, is to show that the Railroad was required by law to take that action (petitioners' brief, p. 18). Thus, on the basis of the fact, which the Railroad admits, that the Railroad was not required by law to make the specific agreements which it did make with the Trainmen, petitioners conclude that they need only show that the agreement between the Railroad and the Trainmen had some actual "influence" or persuasive effect on one or more individual road conductors in their choice of a representative, in order to establish a violation of Section 2, Third.

It is, of course, true that one who asserts illegal interference and coercion by a railroad need not show that the actions of the railroad in question constituted a violation of law apart from and in addition to the asserted violation of the legal right of employes to be free from interference and coercion. But it is plain, under the Railway Labor Act, that the making of a collective bargaining agreement between a railroad and one labor organization cannot, of itself, constitute the basis for a charge of interference and coercion by the railroad of a class of employes represented by another labor organization, unless it is also shown that the agreement is in some way unlawful and violative of the legal rights of such employes or of such other labor organization. Otherwise, collective bar-

gaining in the railroad industry would become impossible because the railroads would be required to assume the risk that any one or more of the provisions of the ultimate collective agreement might be made the basis of a charge that such provisions had some "influence" upon the opinions of employes represented by another labor organization and therefore constituted a violation of Section 2, Third. Again, it seems obvious that Congress never intended to protect the rights guaranteed by Section 2, Third, at so heavy and unnecessary a price in the disruption of normal labor relations in the railroad industry.

2. *A Determination in this Case as to the Respective Bargaining Jurisdictions of the Conductors and the Trainmen Cannot be Made Unless the M.-K.-T. and Southern Pacific Decisions are Overruled or Practically Nullified:*

Petitioners go on to contend in their brief (at pp. 19-21) that, even though a decision for petitioners in the instant case would require a finding by the District Court that the Railroad had violated the Conductors' asserted bargaining jurisdiction in concluding the agreement with the Trainmen, the *M.-K.-T.* and *Southern Pacific* cases do not prevent such a determination by the courts in this case. They reach this conclusion by two lines of argument, the first being to the effect that the *M.-K.-T.* and *Southern Pacific* cases do not mean what they say, and the second being that those cases can be distinguished from the present case.

On the first point, they suggest to this Court that, in giving effect to the decisions in the *M.-K.-T.* and *Southern Pacific* cases in this case, this Court would be impairing the right of employes to select their representatives without interference and coercion by enabling a railroad to interfere with and coerce its employes at will, so long as such coercion takes the form of a violation of the jurisdictional bargaining rights of the statutory representative of those employes, and that therefore a dispute regarding

bargaining jurisdiction must be determined by the courts whenever a charge of coercion is involved therein. This argument is, of course, merely a thinly disguised suggestion to this Court that it now overrule the *M.-K.-T.* and *Southern Pacific* cases.

The chief principle upon which those cases were decided was that there exists no legal criteria by which the courts can determine what are the jurisdictional bargaining rights of various bargaining representatives of employes. That principle is eminently sound and practical, and it applies whether or not a charge of coercion is made. If it stands, there exists no way in which the courts may decide jurisdictional disputes, and the petitioners' arguments, with respect to the practical necessity of deciding such disputes in order to determine whether or not coercion has taken place, do not provide any basis for such decision. Furthermore, if the federal courts are unable to determine what is and what is not a violation of the so-called jurisdictional rights of a railroad labor organization, it seems clear that a railroad company could not do so, whether coercion is charged or not. Petitioners are simply contending, therefore, that a legal duty should be placed upon railroads to refrain from violating rights which no court can define. That Congress had no such novel intention in enacting Section 2, Third, of the Railway Labor Act seems too obvious to require extended discussion.

The final effort put forth by the petitioners in their brief to persuade this Court to the conclusion that the jurisdictional dispute in this case is justiciable consists of the argument that this case can be distinguished from the *M.-K.-T.* and *Southern Pacific* cases. They attempt to do this by saying that in the *M.-K.-T.* and *Southern Pacific* cases the jurisdictional rights of the respective labor organizations were the only legal rights involved, whereas in this case the judicial determination of the Conductors' jurisdictional rights is incidental but necessary

to the enforcement of Section 2, Third" (petitioners' brief, p. 20), involving the right of individual employes to be free from interference and coercion. This purported distinction does not of course serve to differentiate the present case from the *Southern Pacific* case, where a similar argument, based on Section 2, Third and Fourth, and the alleged danger of infringement of employes' rights thereunder, was made but was of no avail (see page 56 above, and passage quoted in footnote thereon from the *Southern Pacific* case). Moreover, the petitioners' contention in this respect is based ultimately upon the unwarranted assumption that this Court in the *M.-K.-T.* and *Southern Pacific* cases could have readily determined the limits of the jurisdictional bargaining rights of the labor organizations involved, but merely chose not to do so because Congress did not intend to have those rights enforced in the courts. This assumption ignores the fact that this Court pointed specifically to the failure of Congress in the Railway Labor Act to establish any such jurisdictional rights as legal rights of employe representatives.

In the final analysis, petitioners in this connection are attempting, by an exercise of legal sophistry, to assert that the *M.-K.-T.* and *Southern Pacific* cases have placed no limit on the jurisdiction of the federal courts which cannot be avoided by a simple variation in the charge against a railroad, namely, by charging, not that the railroad by its actions violated the jurisdictional rights of a labor organization, but that those same actions violated the right of employes to be free from interference and coercion. It is perfectly apparent that the petitioners have not grasped the substance of the decisions in the *M.-K.-T.* and *Southern Pacific* cases and merely regard them as establishing limitations on the forms of pleading a case.

Fundamentally, the petitioners are attempting to distinguish the *M.-K.-T.* case and the *Southern Pacific* case

by the same sort of reasoning by which they attempt to distinguish the *Switchmen's Union* case. Their ultimate contention is simply that the federal courts may accomplish indirectly an adjudication of a jurisdictional dispute, though by direct action such disputes are not justiciable. If the petitioners are correct in their contention, that a jurisdictional dispute is justiciable so long as it is presented to the courts as a matter of coercion and influence by a railroad, it appears certain that all such disputes will ultimately find their way into the courts, because in the case of every such dispute the disgruntled union will allege coercion in order to make its way into court. If such a contention meets with success, then the *M.-K.-T.* case and the *Southern Pacific* case will cease to have practical significance as interpretations of the Railway Labor Act.

III. Independently of the Switchmen's Union, M.-K.-T. and Southern Pacific Decisions, Petitioners' Attempt to Obtain Relief in This Court Must Fail Because Their Failure to Appeal from the Lower Court's Dismissal of the Suit against the Mediation Board has Made That Dismissal, and Therefore the Board's Certification, Final and Unreversible, with the Result that Petitioners have no Standing to Represent the Employes in Question Either in Bargaining Negotiations or in Pressing This Law Suit, and the Case Has Therefore Become Moot.

Entirely apart from and independently of the decisions of this Court in the *Switchmen's Union*, *M.-K.-T.* and *Southern Pacific* cases, there is a conclusive answer to the petitioners' attempt in this Court to obtain the relief which they ask, in that there is no possible way, in the present state of the case, for this Court or any other court to grant petitioners the relief sought in this proceeding. This results from petitioners' failure to name the Board as a respondent in this Court.

In the last analysis, petitioners are seeking to have the Board's action in certifying the Trainmen as the accredited representative of road conductors on the Pennsylvania Railroad annulled and set aside. No other result would be of any value to them, and no form of words which they use can disguise that fact. Indeed, it is plainly admitted in their brief.* This is necessarily so, because, under the provisions of Section 2, Ninth, of the Act, the Railroad is commanded to "treat with" the representative certified by the Board for the purpose of bargaining with respect to the class of employes for whom the representative has thus been certified. So long as the Board's certification stands, the Railroad would be guilty of a violation of its statutory duty if it entered into negotiations with any organization other than the Trainmen, with respect to the class of road conductors.

It follows, therefore, that if the Board's certification cannot be nullified or set aside, the courts are powerless to grant to petitioners the relief which they seek.

But it is clear that, in the present state of the case, the Board's certification has become final and unassailable so far as this proceeding is concerned, and this would be true even if the *Switchmen's Union*, *M.-K.-T.* and *Southern Pacific* decisions had not been made. Petitioners, fully aware of the necessity for them of having the Board's certification set aside, quite properly named the Board as a party defendant in the District Court for

* Thus, petitioners say (p. 30 of their brief) that "the annulment of the election and certification of BRT as the conductors' representative is the only relief that will effectively vindicate the conductors' right to a free choice." Petitioners even go to the extreme of asking not merely that the judgment of the Court of Appeals be reversed, but that that court be instructed by this Court to enter a judgment reversing the judgment of the District Court which dismissed the complaint for failure to state a cause of action (Petitioners' Brief, p. 31). This request of petitioners, for a determination by this Court of the whole merits of the case, is made in disregard of the fact that the Court of Appeals has not yet passed on the merits of the case, and that the case is not before this Court for full argument on the merits.

that purpose. If they had not done so, there would have been no possibility of compelling the Board, by judicial action, to change its determination. The Board continued as a party in the Court of Appeals. The Court of Appeals dismissed the petitioners' suit against the Board, as well as its suit against the other defendants. Petitioners have not named the Board as a respondent in this Court.

This failure of petitioners to bring the Board before this Court has the following consequences. The absence of the Board as respondent in this Court means that petitioners have not appealed from the Court of Appeals' dismissal of the suit with respect to the Board, and accordingly that dismissal has now become final and irreversible. Therefore the Board is not only not before this Court but is out of the proceeding altogether, and would not be before the courts below if the case were sent back to them for further action. Accordingly, the basis for any order by this Court or by the courts below against the Board, requiring it to change its certification or hold a new election or take any other action, is entirely removed, because, with the Board no longer in the proceeding, there is no way in which this Court or any of the courts below could enter an order requiring action by the Board. The Board's certification has therefore become immune to judicial action in this case.

Even if this Court should see fit to reverse the judgment of the court below with respect to the Railroad and the Trainmen, it has no power, under the statutes governing appeals and proceedings on writs of certiorari, to reverse the dismissal with respect to the Board, since no appeal from that dismissal has been taken, and the time allowed by the statute for petitioning for such an

* See pp. 22-23 above, where it is shown that, in the case of *North Dakota* v. *Chicago & N. W. Ry. Co.*, 257 U. S. 485 (1922), this Court decided that it should not enter a decree, contrary to the order of an administrative body, when that body was not before the Court and therefore would not be bound thereby.

appeal has now passed.* Accordingly, the Court of Appeals' dismissal of the suit with respect to the Mediation Board has become res judicata in this case and is not reversible, with the result that there is no way of compelling the Board to change its certification and that certification now stands as judicially unassailable, so far as this proceeding is concerned.

It follows inevitably that the whole controversy has now become moot. The Trainmen's organization stands as the statutory representative of the class of road conductors on the Pennsylvania Railroad. All bargaining and negotiation with respect to that class must under the statute be with the Trainmen. Even if the agreement already made between the Trainmen and the Railroad were held to be unlawful and invalid, as petitioners' complaint requests, any future agreements with respect to road conductors, as well as with respect to yard conductors and brakemen, on the Pennsylvania Railroad would still have to be between the Railroad and the Trainmen. The Conductors' organization has no standing to represent road conductors or any other class of employes on the Pennsylvania Railroad, either in bargaining negotiations or in a law suit such as the present one.

In these circumstances, to grant any of the petitioners' prayers for relief would not only amount to a recognition of a right which petitioners no longer have—the right to represent road conductors on the Railroad—but would also constitute an idle and bootless gesture. A declaratory judgment as to the respective rights of the

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* The Act of February 13, 1925, c. 229, §8 (43 Stat. 940, 28 U. S. C. 350) provides: "No appeal or writ of certiorari, intended to bring any judgment or decree before the Supreme Court for review shall be allowed or entertained unless application therefor be duly made within three months after the entry of such judgment or decree." The judgment of the Court of Appeals below was entered on March 27, 1944 (R. 117), so that the three-months' period has long since expired. In *Hartford Accident & Indemnity Co.* v. *Bunn*, 285 U. S. 169 (1932), this Court, referring to the above statutory provision, said (p. 178): "Passage of the three months' period *extinguished* the right to grant an appeal." (Emphasis supplied.)

parties with regard to the jurisdictional claims of the two unions, or with respect to the agreements of the parties, would be pointless because new negotiations and agreements concerning the subjects in which petitioners are interested would nevertheless have to be limited to the Trainmen, to the exclusion of the petitioners. Similarly, a declaratory judgment or an injunction with respect to the alleged acts of coercion in the employes' choice of a representative would be futile because there is no possibility in this proceeding of compelling a new election and all the acts complained of are in the past and are not in any way alleged as continuing.

Accordingly, petitioners' failure to name the Board as a respondent in this Court has removed all basis for granting the relief which they ask. For this reason alone, wholly independently of the other reasons stated in this brief, the petitioners' appeal in this Court must be denied and the judgment of the court below affirmed.

CONCLUSION.

From the foregoing analysis, it is clear that there are four fundamental reasons why the judgment of the Court of Appeals below should be affirmed.

1. Under the *Switchmen's Union* decision, a certification issued by the Mediation Board under the Railway Labor Act is final and not subject to judicial review, and therefore petitioners cannot obtain from the courts in this proceeding a nullification of the certification here involved, as they must do if they are to be given the relief sought.

2. Independently of the *Switchmen's Union* decision, judicial enforcement of the right here invoked by petitioners, of employes to be free from coercion in their choice of a representative is limited to proceedings brought under Section 2, Tenth, of the Act by United

States attorneys under the direction of the Department of Justice, and this is not such a proceeding.

3. The facts relied upon by petitioners as the basis for their complaint constitute merely a familiar form of inter-union jurisdictional dispute, and this Court has held, in the *M.-K.-T.* and *Southern Pacific* cases, that such controversies are not justiciable.

4. Independently of the *Switchmen's Union*, *M.-K.-T.* and *Southern Pacific* decisions, neither this Court nor any other court can, in this proceeding, grant petitioners the relief sought, because petitioners have failed to appeal from the lower court's dismissal of their suit with respect to the Mediation Board, with the result that that dismissal has now become final and unreversible, and the Board is no longer in the proceeding, so that there is no way of compelling the Board to change its certification in this case; and accordingly the case has become moot.

For all these reasons, it is submitted that the judgment of the Court of Appeals should be affirmed.

Respectfully submitted,

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APPENDIX.

A. *Excerpts from the Railway Labor Act.*

(Act of May 20, 1926, as amended by Act of June 21, 1934, 45 U. S. C., Sec. 151, *et seq.*)

"GENERAL PURPOSES.

"Sec. 2. The purposes of the Act are: (1) To avoid any interruption to commerce or to the operation of any carrier engaged therein; (2) to forbid any limitation upon freedom of association among employees or any denial, as a condition of employment or otherwise, of the right of employees to join a labor organization; (3) to provide for the complete independence of carriers and of employees in the matter of self-organization to carry out the purposes of this Act; (4) to provide for the prompt and orderly settlement of all disputes concerning rates of pay, rules, or working conditions; (5) to provide for the prompt and orderly settlement of all disputes growing out of grievances or out of the interpretation or application of agreements covering rates of pay, rules, or working conditions.

"GENERAL DUTIES.

"First. It shall be the duty of all carriers, their officers, agents, and employees to exert every reasonable effort to make and maintain agreements concerning rates of pay, rules, and working conditions, and to settle all disputes, whether arising out of the application of such agreements or otherwise, in order to avoid any interruption to commerce or to the operation of any carrier growing out of any dispute between the carrier and the employees thereof.

"Second. All disputes between a carrier or carriers and its or their employees shall be considered, and, if possible, decided, with all expedition, in conference between representatives designated and authorized so to

confer, respectively, by the carrier or carriers and by the employees thereof interested in the dispute.

"Third. Representatives, for the purposes of this Act, shall be designated by the respective parties without interference, influence, or coercion by either party over the designation of representatives by the other; and neither party shall in any way interfere with, influence, or coerce the other in its choice of representatives. Representatives of employees for the purposes of this Act need not be persons in the employ of the carrier, and no carrier shall, by interference, influence, or coercion seek in any manner to prevent the designation by its employees as their representatives of those who or which are not employees of the carrier.

"Fourth. Employees shall have the right to organize and bargain collectively through representatives of their own choosing. The majority of any craft or class of employees shall have the right to determine who shall be the representative of the craft or class for the purposes of this Act. No carrier, its officers or agents, shall deny or in any way question the right of its employees to join, organize, or assist in organizing the labor organization of their choice, and it shall be unlawful for any carrier to interfere in any way with the organization of its employees, or to use the funds of the carrier in maintaining or assisting or contributing to any labor organization, labor representative, or other agency of collective bargaining, or in performing any work therefor, or to influence or coerce employees in an effort to induce them to join or remain or not to join or remain members of any labor organization, or to deduct from the wages of employees any dues, fees, assessments, or other contributions payable to labor organizations, or to collect or to assist in the collection of any such dues, fees, assessments, or other contributions: *Provided*, That nothing in this Act shall be construed to prohibit a carrier from permitting an em-

ployee, individually, or local representatives of employees from conferring with management during working hours without loss of time, or to prohibit a carrier from furnishing free transportation to its employees while engaged in the business of a labor organization.

"Ninth. If any dispute shall arise among a carrier's employees as to who are the representatives of such employees designated and authorized in accordance with the requirements of this Act, it shall be the duty of the Mediation Board, upon request of either party to the dispute, to investigate such dispute and to certify to both parties, in writing, within thirty days after the receipt of the invocation of its services, the name or names of the individuals or organizations that have been designated and authorized to represent the employees involved in the dispute, and certify the same to the carrier. Upon receipt of such certification the carrier shall treat with the representative so certified as the representative of the craft or class for the purposes of this Act. In such an investigation, the Mediation Board shall be authorized to take a secret ballot of the employees involved, or to utilize any other appropriate method of ascertaining the names of their duly designated and authorized representatives in such manner as shall insure the choice of representatives by the employees without interference, influence, or coercion exercised by the carrier. In the conduct of any election for the purposes herein indicated the Board shall designate who may participate in the election and establish the rules to govern the election, or may appoint a committee of three neutral persons who after hearing shall within ten days designate the employees who may participate in the election. The Board shall have access to and have power to make copies of the books and records of the carriers to obtain and utilize such information as may be deemed necessary by it to carry out the purposes and provisions of this paragraph.

"Tenth. The willful failure or refusal of any carrier, its officers or agents to comply with the terms of the third, fourth, fifth, seventh, or eighth paragraph of this section shall be a misdemeanor, and upon conviction thereof the carrier, officer, or agent offending shall be subject to a fine of not less than $1,000 nor more than $20,000 or imprisonment for not more than six months, or both fine and imprisonment, for each offense, and each day during which such carrier, officer, or agent shall willfully fail or refuse to comply with the terms of the said paragraphs of this section shall constitute a separate offense. It shall be the duty of any district attorney of the United States to whom any duly designated representative of a carrier's employees may apply to institute in the proper court and to prosecute under the direction of the Attorney General of the United States, all necessary proceedings for the enforcement of the provisions of this section, and for the punishment of all violations thereof and the costs and expenses of such prosecution shall be paid out of the appropriation for the expenses of the courts of the United States: *Provided*, That nothing in this Act shall be construed to require an individual employee to render labor or service without his consent, nor shall anything in this Act be construed to make the quitting of his labor by an individual employee an illegal act; nor shall any court issue any process to compel the performance by an individual employee of such labor or service, without his consent."

B. *Excerpts from Brief for Mediation Board in Court of Appeals Below.**

"Summary of Argument.

I.

"*A*. The motion for summary judgment was properly denied. This motion was based on the theory that the

* A copy of this brief is lodged with the clerk of this Court.

Mediation Board's certification and election were invalid because the Board had failed to perform its statutory duty to investigate, hear, and determine the validity of charges of carrier misconduct made to it before the election by appellants. But under the Act the Board is required to investigate and make determinations only where there are disputes as to whether the employee representatives are designated in accordance with the requirements of the Act. The only requirement as to designation of representative contained in the Act is that in Section 2, third, which states that representatives shall be designated without carrier coercion. The charges of carrier coercion made to the Board here did not, even if true, reasonably relate to the designation of representatives, and therefore the Board was not required to investigate their truth.

"*B.* Even if the Board should have investigated such charges, the court was not required to remand the case to the Board for that purpose but could pass upon the issues itself. The primary administrative jurisdiction doctrine does not apply here, because the court accepted the facts as stated and the only issues before the court were legal rather than factual.

II.

"The court also properly dismissed the complaint because the facts stated therein, which were treated by the court as true, did not allege unlawful coercion within the meaning of Section 2, third. These facts were the same as those alleged in the complaint to the Board and therefore likewise did not relate to coercion in connection with the designation of representatives, the only kind of coercion forbidden by that section. The allegations, furthermore, do not charge coercion within the meaning placed upon that term in this connection by the Supreme Court, since the conduct described was obviously not such as to override the will of an employee desiring to vote for

O.R.C. and cause him to vote for B.R.T." (From pages 9-10 of brief.)

"We prefer, however, to support the Board's decision that it lacked authority to investigate, hear, and determine these charges on a somewhat broader ground, a ground admittedly not the one mentioned in the Board's letter. The right to do so cannot be successfully challenged. For it is a familiar rule of appellate practice that where an administrative body, just as a trial court, reaches the correct result on the admitted facts, even though on an erroneous legal ground, its decision must be affirmed on appeal. *Helvering* v. *Gowran*, 302 U. S. 238, 245-246; *Securities Comm.* v. *Chenery Corp.*, 318 U. S. 80, 88. The ground for affirmance which we now advance is that the Board's duty is only to investigate whether employee representatives are designated and authorized without carrier coercion, and not to investigate whether other provisions of Section 2 not relating to designation and authorization of representatives have been violated. And we shall show that the charges of carrier coercion made to the Board on behalf of O.R.C. did not, even if accepted as true, relate to designation of employee representatives, and were thus not such as the Board was required to investigate in order to ascertain if they were well-founded.

"The express language of Section 2, ninth and tenth, clearly reveals that Congress intended the Board to have only a limited investigatory function and intended the general police power to enforce the provisions of the Railway Labor Act to be lodged instead with the United States Attorneys acting in the federal courts. Section 2, ninth, by its first sentence gives the Board power to investigate only disputes 'as to who are the representatives designated and authorized in accordance with the requirements of

this Act.[10] While the various paragraphs of Section 2 impose numerous requirements upon the carriers, only paragraph third imposes any requirement with respect to the "designation and authorization of representatives." This paragraph requires that representatives be designated without carrier interference, influence, or coercion.[11] The other requirements concern entirely different activities; such as collective bargaining, filing of notices and the like. The United States Attorneys acting in the federal courts, on the other hand, in Section 2, tenth, were given the much broader authority to bring all necessary proceedings for the enforcement[12] of the Act, and violation of the third, fourth, fifth, seventh, or eighth paragraphs of Section 2 was specifically made a misdemeanor.

"The limited scope of the Board's authority to investigate and make determinations concerning illegal practices of carriers is clearly demonstrated, too, when the Railway Labor Act is contrasted with the National Labor Relations Act (49 Stat. 449, 29 U. S. C. sec. 151-166). The National Labor Relations Board is there

"[10] That the Board's investigatory authority relates only to the designation of representatives is also indicated by the following sentence in Section 2, ninth:

'In such an investigation, the Mediation Board shall be authorized to take a secret ballot of the employees involved, or to utilize any other appropriate method of ascertaining the names of their duly designated and authorized representatives in such manner as shall insure the choice of representatives by the employees without interference, influence, or coercion exercised by the carrier.'"

"[11] Apparently appellants before the Board were relying on this paragraph since their letter to the Board stated (App. 31):

'An election at this time could not be said to be one "without interference, influence, and coercion exercised by the carrier".'"

"[12] Joseph B. Eastman, then federal coordinator of transportation, who appeared before the Senate Committee on Interstate Commerce in support of the bill which became the present Railway Labor Act of 1934 made the following statement in this connection before that Committee (Hearings on S. 3266, 73d Cong. 2d Sess., April 10, 1934, p. 14):

'Enforcement involves nothing but the determination of the facts, and for this reason it has in S. 3266 been definitely placed, where it belongs, in the hands of the Department of Justice'."

specifically authorized after complaint and hearing to prevent employers from carrying on certain unfair labor practices (29 U. S. C. sec. 160). The unfair labor practices are specifically defined[13] and relate to activities not necessarily involving the designation of representatives (29 U. S. C. sec. 158). And the latter Board is specifically given the power to issue orders to employers and to subpoena witnesses (29 U. S. C. secs. 160, 161), powers which the Mediation Board completely lacks, and tools which are essential to the exercise of any extensive investigatory, hearing, or enforcement functions.

"We submit therefore that the Mediation Board is required to investigate and make a determination only as to charges that a carrier is coercing its employees with respect to the designation of their representatives as forbidden by Section 2, third. Can it reasonably be said that the specific charges of coercion made to the Board by appellants against the carrier here, even if they were accepted as true, fall within this category? We think not, and therefore we think that the Board properly refused to investigate, hear, or make any determination with respect to the truthfulness of these charges.

"Both the letter of appellants to the Board and the complaint before the court charge two general types of misconduct. In the first place, it is charged that the carrier bargained collectively and entered into a collective agreement with the B.R.T., and refused to bargain collectively with the O.R.C. as to certain matters alleged to

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[13] They include:

1. Interference with employees in their right to organize and bargain collectively through representatives of their own choosing.

2. Domination of the formation or administration of a labor union.

3. Encouraging or discouraging membership in a labor union by discrimination in regard to hire or tenure of employment.

4. Discrimination against an employee because he files charges or gives testimony under the Act.

5. Refusal to bargain collectively with the representatives of the employees."

be within the exclusive bargaining jurisdiction of the O.R.C. as the representative of the road conductors. Secondly, it is charged that the carrier in negotiations with the O.R.C. sought by various means to coerce it into the acceptance of rules and working conditions not satisfactory to it.

"The first charge is merely one that the carrier has failed to bargain collectively with the representatives of a particular craft or class but has bargained instead with the representatives of another craft as to certain work alleged to be within the bargaining jurisdiction of the first craft. Such a jurisdictional dispute as to whether certain work belongs to one craft or another clearly does not relate to the designation of employee representatives of any craft, as this court has but recently held in *Brotherhood of Railroad Trainmen v. National Mediation Board*, 135 F. (2d) 780, 76 App. D. C. . The charge in any event relates to the obligation to bargain collectively, an obligation entirely different from the one upon the carrier not to interfere with the designation of employee representatives.

"The alleged coercion of the second type was by O.R.C.'s own statement directed to the O.R.C. bargainers rather than to the employees, and related merely to the drafting of the collective bargaining contract rather than to the designation of representatives. There is nothing in the Act which empowers either the Board or the courts to prevent a representative of either party from exerting the ordinary selfish 'pressure' of human nature upon the representative of the other in an effort to secure a contract most advantageous to the pressure user's party. Coercion in contract negotiation is an entirely different thing from coercion in connection with the choice of the representatives who are to do the negotiating. Only the latter is forbidden by this Act." (From pages 13-16 of brief).

* * * * * * *

"Little more need be said here to show that the complaint did not allege a violation of Section 2, third, than has already been said with respect to the charges made by appellants in their letter to the Board. The charges in the complaint are the same as were made in the letter of appellants to the Board. And it has already been proved that the charges concerning the two types of misconduct referred to in the letter did not, even if accepted as true, establish a violation of section 2, third, because they did not involve coercion with respect to the designation of employee representatives.

"We need only add that the complaint does not charge 'interference,' 'influence,' or 'coercion,' as those terms have been construed in the only Supreme Court decision dealing with the meaning of section 2, third." In *Texas & N. O. Ry. Co.* v. *Ry. Clerks*,[18] 281 U. S. 548, 568, that Court said:

> 'The intent of Congress is clear with respect to the sort of conduct that is prohibited. "Interference" with freedom of action and "coercion" refer to well-understood concepts of the law. The meaning of the word "influence" in this clause may be gathered from the context. Noscitur a sociis. *Virginia* v.

[18] Though the Supreme Court was there actually considering the language of the Railway Labor Act of 1926, that language was declared by Commissioner Eastman in the hearings on the 1934 act to be 'the same in principle as the section' in the present act. He further read the above quotation as indicating the meaning of the terms now employed. *Hearings on H. R. 7650*, 73d Cong., 2d Sess., before House Committee on Interstate and Foreign Commerce, May 22, 1934, pp. 22, 25."

[19] "18 Though the particular carrier conduct in that case was condemned as in violation of that section, there is no similarity between such conduct and that of the carrier here. There the carrier actively organized a company union; permitted its employees who were active in promoting the development of the union to devote their time to that enterprise without deduction from their pay; allowed to be charged to it the expenses incurred in recruiting members in the union; had reports made to it as to the progress of the recruiting; and discharged from its service and revoked the passes of certain leading representatives of an opposing independent union (281 U. S. 548, 560)."

Tennessee; 148 U. S. 503, 519. The use of the word is not to be taken as interdicting the normal relations and innocent communications which are a part of all friendly intercourse, albeit between employer and employee. "Influence" in this context plainly means pressure, the use of the authority or power of either party to induce action by the other in derogation of what the statute calls "self-organization." *The phrase covers the abuse of relation or opportunity so as to corrupt or override the will*, and it is no more difficult to appraise conduct of this sort in connection with the selection of representatives for the purposes of this Act than in relation to well-known applications of the law with respect to fraud, duress, and undue influence." (Italics supplied.)

"It is evident from this quotation that the carrier coercion forbidden by the Act is such as is likely to corrupt or override an employee's will in making his choice of representative. This concept appears to contemplate at least the making of threats or promises of reward by the carrier to the employees involved to induce them to choose one union rather than another. It is significant that there is nothing of this nature in the present picture. All that is alleged in the complaint here is that the carrier as to certain work bargained and contracted with B.R.T. rather than O.R.C., and also attempted in negotiations involving other work to coerce the O.R.C. bargainers to accept contract provisions unfavorable to the O.R.C.

"The numerous cases cited by appellants under the National Labor Relations Act (Br. 14) in support of their contentions that such conduct amounts to a violation of Section 2, third, clearly do not support them. These cases not only involve conduct entirely different from and more

egregious than the present, but also provisions[19] in the National Labor Relations Act not comparable to Section 2, third. In fact, recent decisions indicate that even under the broader language of the National Labor Relations Act an employer may without violating the Act go much further than the carrier did here, and may even express a recommendation to his employees as to what union they should select, so long as such recommendation is not coupled with intimidation. *N. L. R. B.* v. *Virginia Power Co.*, 314 U. S. 469; *N. L. R. B.* v. *American Tube Bending Co.*, 134 F. (2d) 993 (C. C. A. 2), cert. den., October 18, 1943, 64 S. Ct. .

"Since these acts were not in violation of Section 2, third, as contended by appellants, the district court properly dismissed their complaint and refused to set aside the election. And since, as a result of that election, they were officially displaced by the B.R.T. as the representatives of the road conductors, they were not entitled to have set aside any of the provisions of the contract theretofore entered into between the carrier and the B.R.T. or to any other relief." (From pages 19-22 of brief.)

[19] Many of these cases involve the provision in Section 8 of that Act making it an unfair labor practice to refuse to bargain collectively with the authorized employee representative. There is, of course, no such provision in Section 2, third, of the Railway Labor Act."

SUPREME COURT OF THE UNITED STATES.

No. 200.—October Term, 1944.

Order of Railway Conductors of America, H. W. Fraser, as President of the Order of Railway Conductors of America, etc., et al., Petitioners,
vs.
The Pennsylvania Railroad Company and Brotherhood of Railroad Trainmen.

On Writ of Certiorari to the United States Court of Appeals for the District of Columbia.

[December 11, 1944.]

Mr. Justice Roberts delivered the opinion of the Court.

This is a suit for a declaratory judgment and for an injunction brought by the Order of Railway Conductors of America, an unincorporated association of railway employes, against the National Mediation Board, two of its members, the Pennsylvania Railroad, and a subsidiary railroad company, and the Brotherhood of Railroad Trainmen, an unincorporated association of railway employes. For the sake of brevity, the plaintiffs will be called "plaintiff"; the National Mediation Board and its members "board"; the two railroads "railroad", and the Brotherhood of Railroad Trainmen "trainmen".

The complaint, after stating the capacity of the parties, makes the following allegations, which as will appear, are for purposes of decision, to be taken as true. The plaintiff is, and for years has been, the accredited representative and bargaining agent for the craft of road conductors of the railroad, and the trainmen the representative and agent of road brakemen, yard conductors, yard brakemen, baggagemen and switchtenders. The two associations have jointly negotiated contracts with the railroad, and such a contract was jointly negotiated effective April 1, 1927, and remains in force with respect to road conductors, except as modified concerning rates of pay. April 18, 1941, the railroad notified the two unions of its desire to alter the contract and, pursuant to the notice, the accredited representatives of the parties

met in conference to adjust classifications of conductors, rates
pay for them, and the control of the so-called "extra board" f
conductors. Due to disagreements between the two unions a
the concurrence by the railroad in the attitude of the trainme
representatives of the conductors withdrew from the joint neg
tiation and served notice of withdrawal on the railroad. Tw
weeks thereafter the railroad and the trainmen signed a ne
agreement covering the matters under consideration. Certa
provisions agreed upon between the railroad and the trainm
were in violation of sections of the Railway Labor Act and, the
fore, void, and the prior agreement between the conductors a
the railroad remained in force, but, nevertheless, the railroa
since execution of the new agreement with the trainmen, has
fused to bargain with the plaintiff.

The railroad and the trainmen conspired and confederated
an unlawful programme designed to embarrass, discredit, a
weaken the plaintiff and strengthen the trainmen and thus to
fluence, coerce, and interfere with the craft of road conduct
in their choice of a bargaining representative, and the railro
and trainmen were guilty of acts intended, and effective, to th
end: September 23, 1942, the trainmen filed with the board
request to be certified as the bargaining representative of
craft of road conductors.

The plaintiff protested to the board against the holding of
election, charging that the railroad was interfering with, int
ening, and coercing conductors by unlawfully bargaining w
the trainmen with respect to road conductors' working con
tions, in breach of the existing contract between the plaintiff a
the railroad. The board illegally and wrongfully ruled that
had no jurisdiction to consider the charges, ordered an elect
to determine the bargaining representative for road conducto
held such election, and issued a certification based thereon
trainmen was the authorized representative of the road cond
tors, which election and certification are illegal, null and vo
inter alia, because the board refused to perform its duties
investigating the alleged unfair labor practices.

Based on the foregoing allegations, the relief demanded was
that the election and certification be annulled, vacated, and
aside; (2) that the board and its members be restrained fr
holding any election for a bargaining representative of road c

ductors until it shall have considered the unfair labor practices and found that they do not amount to interference, influence or coercion; and that (b), in the alternative, the court declare the practices complained of constitute unlawful interference or coercion of the craft of road conductors, and restrain the board from holding an election until the board determines, after investigation and hearing, that such interference, influence or coercion has ceased; (3) (4) that it be declared that certain paragraphs of the agreement negotiated by the railroad and the trainmen were not negotiated with the accredited representative of the road conductors and were illegal infringements upon the exclusive right of the plaintiff, as accredited bargaining agent, to represent the conductors; (5) that it be declared that the plaintiff, as such representative, has the exclusive right to negotiate in collective bargaining for the conductors; (6) that the railroad be permanently enjoined from bargaining or making or maintaining agreements with trainmen, or any other union except the plaintiff on behalf of road conductors so long as the plaintiff is the accredited representative of that class; (7) that the railroad be directed to negotiate and bargain with the plaintiff, as representative of the road conductors, so long as the plaintiff remains such representative; (8) that the railroad be enjoined from directly or indirectly coercing, influencing, or interfering with the craft of road conductors and their choice of a representative under the Railway Labor Act; (9) further relief.

After answers by the defendants the plaintiff moved for summary judgment on the pleadings and an affidavit which added nothing to the matters appearing in the pleadings. The District Court, though of opinion that there was no genuine issue as to any material fact presented under the motion for judgment, nevertheless denied the motion and also dismissed the complaint, because it held that the facts alleged and admitted failed to establish a cause of action.

The plaintiff appealed to the Court of Appeals for the District of Columbia. Each appellee filed a motion to dismiss on the ground that the court lacked jurisdiction. The motions were grounded on the decisions in *Switchmen's Union of North America* v. *National Mediation Board*, 320 U. S. 297 and related cases.[1]

[1] General Committee of Adjustment, v. Missouri K. T. R. Co., 320 U. S. 323; Same v. Southern Pacific Co., 320 U. S. 338.

which were announced after the appeal had been taken. The plaintiff answered the motions. The court, being of opinion that, under the rulings in the *Switchmen's Union* case and others decided at the same term,[2] it was without jurisdiction of the controversy, dismissed the appeal.[3]

The plaintiff applied to this court for certiorari to review the judgment dismissing the trainmen and the railroad. It did not seek review of the judgment granting the board's motion and dismissing the board. That judgment is now final and beyond review here.

The plaintiff based its claims to relief on § 2 Third of the Railway Labor Act, which bans interference, influence, or coercion by either party in respect of designation of representatives by the other. The board, in denying jurisdiction, evidently relied on a portion of § 2 Ninth, dealing with its function to investigate disputes concerning representation of employes, to hold elections, and to certify the authorized representative, as limiting its jurisdiction to the actual conduct of the investigation and election and precluding it from investigating prior action by any of the parties. The railroad relied upon § 2 Tenth, which it asserts creates remedies for violation of § 2 Third that are exclusive of all other remedies. The relevant portions of the sections thus relied on are quoted in the margin.[4] The contentions so made raise important questions, but we express no opinion on them since, for reasons

[2] The court cited in addition to the cases relied on by the defendants, Brotherhood v. United Transport Service Employees, 320 U. S. 715.

[3] 141 F. 2d 366.

[4] Sec. 2 Third. "Representatives, for the purposes of this chapter, shall be designated by the respective parties without interference, influence, or coercion by either party over the designation of representatives by the other; and neither party shall in any way interfere with, influence, or coerce the other in its choice of representatives. . . . 45 U. S. C. § 152 Third.

Sec. 2 Ninth. "[T]he Mediation Board shall be authorized to take a secret ballot of the employees involved, or to utilize any other appropriate method of ascertaining the names of their duly designated and authorized representatives in such manner as shall insure the choice of representatives by the employees without interference, influence, or coercion exercised by the carrier. . . . 45 U. S. C. § 152 Ninth.

Sec. 2 Tenth. "The willful failure or refusal of any carrier, its officers or agents, to comply with the terms of the third, fourth, fifth, seventh, or eighth paragraph of this section shall be a misdemeanor. . . . It shall be the duty of any district attorney of the United States to whom any duly designated representative of a carrier's employees may apply to institute in the proper court and to prosecute under the direction of the Attorney General of the United States, all necessary proceedings for the enforcement of the provisions of this section, and for the punishment of all violations thereof." . . . 45 U. S. C. § 152 Tenth.

about to be stated, we hold that we do not reach them within the framework of this case.

The first and second prayers for relief seek the annulment and cancellation of the board's certification and an injunction against board action. Plainly no such relief should be granted, if at all, in the absence of the board as a party. Because of the failure to appeal from the order dismissing it, the board is not, and never can be, a party to this cause, either here or in the courts below.

The third, fourth and fifth prayers in effect request a declaration that the plaintiff is the representative of the road conductors for bargaining notwithstanding the board's certification to the contrary. Since the election and certification could not be annulled without making the board a party, that result cannot be obtained by indirection by having the court substitute itself for the board; or declare, independently of the board, who is the accredited representative of the plaintiff.

The sixth, seventh, and eighth prayers have a similar object. They ask an injunction to prevent the railroad from bargaining with trainmen and a mandatory injunction that it shall bargain with the plaintiff as representative of road conductors. Such a decree would be in the teeth of the board's certification. To grant such a decree would seem to be in contravention of the *Switchmen's Union* case, *supra*, and in any event such action should not be taken in the absence of the board.

The eighth prayer seeks an injunction against future acts of the railroad coercive of the class of road conductors in choosing a bargaining representative. As we have seen, an election has been held, a representative chosen and the choice certified by the board. No election is now pending and there is no averment in the bill that an election is about to be held or that the railroad is about to commit any act in violation of the proscription of § 2 Third. All that the bill does is to recite what the railroad has heretofore done in advance of the election already held and the certification based upon it. No case is stated requiring the entry of the injunction prayed.

The arguments in this case covered a wide range and embodied suggestions as to possible remedies should the board act or refuse to act on charges of coercion antecedent to election and on possible remedies to deprive an employer guilty of influence and